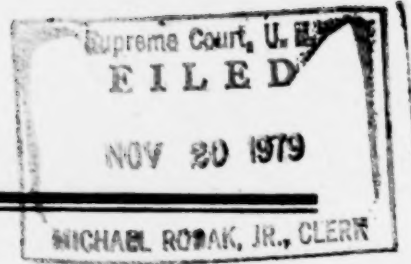


APPENDIX



IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1979

\_\_\_\_\_  
No. 78-6899  
\_\_\_\_\_

ROBERT FRANKLIN GODFREY,  
*Petitioner*

*vs.*

THE STATE OF GEORGIA,  
*Respondent*

\_\_\_\_\_  
ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA

\_\_\_\_\_  
PETITION FOR CERTIORARI FILED JUNE 25, 1979  
CERTIORARI GRANTED OCTOBER 9, 1979

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## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

- December 15, 1977: Indictment for murder (two counts) and aggravated assault returned and filed in the Polk (Georgia) Superior Court.
- February 23, 1978: Petitioner's motion to dismiss indictment on the ground that the death penalty constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution, and that the procedure for the imposition of the death penalty set out in Ga. Code Ann. §§ 26-1101, 26-3102 and 27-2534.1 amounts to a denial of due process and equal protection of the law.
- March 3, 1978: Petitioner arraigned and enters a plea of not guilty.
- March 6, 1978: Petitioner's trial in the Superior Court of Polk County, Georgia, commences.
- March 9, 1978: Petitioner found guilty as charged in the bill of indictment and sentenced to death on two counts of murder and ten years for aggravated assault.
- March 13, 1978: Sentences of death by electrocution and ten years for aggravated assault filed with the Superior Court of Polk County, Georgia.
- March 20, 1978: Motion for a new trial filed with the Superior Court of Polk County, Georgia.
- August 22, 1978; Superior Court of Polk County, Georgia, denies Petitioner's motion for a new trial.
- September 21, 1978: Notice of appeal filed in the Polk Superior Court.

February 27, 1979: Judgment affirmed by the Supreme Court of Georgia.

March 27, 1979: Petitioner's motion for rehearing denied by the Supreme Court of Georgia.

June 25, 1979: Petition for writ of certiorari filed in the Supreme Court of the United States.

August 14, 1979: Application of Petitioner for stay of execution and enforcement of sentence of death granted by Supreme Court of the United States.

October 9, 1979: Petition for writ of certiorari granted by the Supreme Court of the United States.

GEORGIA, POLK County.

IN THE SUPERIOR COURT OF SAID COUNTY

The Grand Jurors selected, chosen and sworn for said County, to-wit:

1. <u>N. J. Brumlett</u>	FOREMAN
2. <u>G. Leon Morris</u>	13. <u>MC Stringer, Jr.</u>
3. <u>David L. Lester</u>	14. <u>W M Moss</u>
4. <u>Claude Alexander</u>	15. <u>—</u>
5. <u>Donald M. Hooper</u>	16. <u>Earl S. Simpkins</u>
6. <u>Dorison C. Mobley</u>	17. <u>Thomas B. Pettit</u>
7. <u>Mrs. Fay C. Hartman</u>	18. <u>Mrs. Van H. Hunt</u>
8. <u>—</u>	19. <u>James Harvey McClendon</u>
9. <u>W. H. Hickey</u>	20. <u>Mary Ann Moss</u>
10. <u>Andrew M. Bennett</u>	21. <u>Mrs. D H Condon</u>
11. <u>Namer F. Arrington</u>	22. <u>Mrs. Charles E. Pickard</u>
12. <u>Cleo L. Bergen</u>	23. <u>Bobbie Daniel Bennett</u>

In the name and behalf of the citizens of Georgia, charge and accuse

ROBERT FRANKLIN GODFREY

hereafter referred to as the accused, of the County and State aforesaid with the offense of

MURDER

for that accused on the 20 day of September, in the year of our Lord Nineteen

Hundred and seventy seven, in the County aforesaid, did then and there, unlawfully

with malice aforethought and while making an assault upon the person of Mildred Godfrey with a deadly weapon, the same being a shotgun, cause the death of the said Mildred Godfrey, by shooting her with said shotgun, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT TWO

And, the Grand Jurors aforesaid, upon their oaths aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said ROBERT FRANKLIN GODFREY, hereinafter referred to as the accused, with the offense of MURDER, for that the said accused on the 20th day of September, 1977, in the County aforesaid, did then and there unlawfully with malice aforethought and while making an assault upon the person of Chessie C. Wilkerson with a deadly weapon, the same being a shotgun, cause the death of Chessie C. Wilkerson, by shooting her with said shotgun, contrary to the laws of said State, the good order, peace and dignity thereof.

COUNT THREE

And, the Grand Jurors aforesaid, upon their oaths aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said ROBERT FRANKLIN GODFREY, hereinafter referred to as the accused, with the offense of AGGRAVATED ASSAULT, for that the said accused on the 20th day of September, 1977, in the County aforesaid, did then and there unlawfully make an assault upon the person of Tracy Godfrey with intent to murder the said Tracy Godfrey, and did then and there intentionally cause physical harm to Tracy Godfrey by striking her about the head with a shotgun-rifle barrel and blunt object, contrary to the laws of said State, the good order, peace and dignity thereof.

Polk Superior Court

August Term, 19 77

John J. Farrow  
Prosecutor.  
(Assistant) District Attorney

SPECIAL PRESENTMENT



**WITNESSES FOR THE STATE**  
*Obbie Thaden*  
 J. Mc McLendon  
 Seals Menahew  
 Hoyt Dingle  
 Seals Stafford  
 Dr. Robert A. Farrell  
 James Sanders  
 Ronnie D. Dobson  
 James Welch  
 J. N. Naney  
 Chris Wolfe  
 C. Rice  
*Ricky Venable*  
*Cathy Venable*  
*Robert Franklin Godfrey*  
 The Defendant

**THE STATE**  
 VS.  
**ROBERT FRANKLIN GODFREY**

**MURDER (TWO COUNTS) and**  
**AGGRAVATED ASSAULT**

**CLERK'S OFFICE, SUPERIOR COURT**  
 Entered on Minutes No. 113, Page 412  
 This 10 day of March 1978  
 I, *John T. Perren*, District Attorney  
 and *William H. Perren*, Defendant's Attorney  
 do hereby certify that the above is a true and correct copy of the transcript of the proceedings in the above entitled case, as the same were heard in open court, and that the same were read to the jury and the defendant, and that the jury found the defendant guilty.

**SPECIAL PRESENTMENT**  
 Recorded in Indictment Book  
 No. 7 Page 520-522  
 This 15 day of December 1977  
*William H. Perren*, Clerk

526

We, the Jury, find the defendant \_\_\_\_\_ guilty.

This the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_  
 Foreman

**IN THE SUPERIOR COURT OF POLK COUNTY,  
 GEORGIA**

No. 1946

STATE OF GEORGIA

v.

**ROBERT FRANKLIN GODFREY**

**EXCERPTS FROM TRIAL TRANSCRIPT -  
 March 6-9, 1978**

**TESTIMONY OF DENNIS NEWBY**

**DIRECT EXAMINATION**

**BY—MR. PERREN**

\*\*\*\*\*

Q Where was that located with reference to your house?

A The trailer is right to the left of mine, about thirty feet.

Q From yours?

A Yes sir.

Q Where did Ricky Venable and Cathy Venable live?

A In the house right in front of my grandmother's trailer.

Q Now, did you have an occasion on the 5th day of September to go down there when there was some trouble between Mr. and Mrs. Godfrey?

A I went up there one day but I don't know whether it was the 5th or 6th, or what day.

Q How long was it before Mrs. Godfrey was killed?

A I was up there several different days, it could have been a week or two weeks.

Q All right. Now, on that occasion what did you do when you went to the Godfrey residence?

A Talked to Mildred and Bob.

Q And what were they doing?

A Apparently they were having an argument. They was in the bathroom.

Q And did you see either one of them at that time?

A No. I just called their names and they answered.

Q Where were you?

A In the bedroom.

Q And after you had called their names and they answered what did you do?

A They said they'd be out in a minute and I stepped back in the hall and into the living room and then Bob came on in there and Mildred came in there a little bit later.

Q All right. When they came in there what, if anything, did you notice as you saw them?

A Well, Bob was mad and Mildred was scared and that's about all I noticed.

Q Did you pay any attention to Mildred Godfrey's clothing at that time?

A Not real particular, not nothing noticeable.

Q Now, who was there other than you at that time?

A Tracey, and I believe Cathy was. Billy came up later.

Q Billy Godfrey?

A Right.

Q Do you remember whether or not Billy's wife Geraldine came up there?

A No, she didn't.

Q Now, at that time how long did you stay there at the Godfrey house?

A Approximately thirty minutes.

Q Did you have any conversation at that time with Mr. and Mrs. Godfrey?

A Yes.

Q What was the nature of the conversation that you had with them?

A Well, it was in relation to buying the property..

Q And what property was that?

A Bob and Mildred's residence.

Q Now, was there any discussion between them while you were present as to whether or not they had had a fight of any kind at that time?

A Well yeah, they argued some while I was there.

Q And what was said, if you recall, between them?

A Mildred and Tracey was going to leave and he didn't want them to leave.

Q What did he tell them about her wanting to leave with Tracey?

A He told Mildred he'd cut her if she left.

Q And did you observe at that time whether or not he had any knife?

A A pocket knife.

Q Where was the pocket knife?

A In his hand.

Q Can you tell us whether that knife was open or shut?

A He opened it.

Q And when he opened the knife there what did he say?

A He told her to set . . . she was on the couch and she stood up and he told her to set back down or he'd cut her.

Q And when he told her that what did she do?

A She set back down.

Q Now, do you recall, Mr. Newby, what kind of clothes Mildred Godfrey was wearing at that time?

A No sir.

Q Did you notice whether or not any of her clothing was cut at that time?

A I didn't notice it if it was.

Q All right. How long did you stay there?

A A good thirty minutes, or maybe a little longer.

Q And when you left what did you do?

A I went home.

Q Now, from the time that you left there did you see either one of them any more that day?

A I seen them both.

Q Where did you see them later that day?

A I seen Bob out in his yard. I believe he left in his car and then I seen Mildred, her and my grandmother left. I seen them when they left.

Q Who is your grandmother?

A Chessie Wilkerson.

Q Now, do you know who left, if anyone, with Mildred Godfrey and your grandmother, Mrs. Wilkerson?

A Tracey.

Q Now, after that time did you see Mildred Godfrey any more?

A Not until the next day I don't believe.

Q Where did you see her the next day?

A Back over at the house.

Q Did you see Robert Godfrey at that time?

A I probably did. I can't remember exactly but I probably did.

Q Do you know when they separated?

A About two weeks before the shooting.

Q And was this the same date that you're talking about?

A I believe it is.

Q All right. Now, after they separated where did Mildred Godfrey stay?

A She stayed three places.

Q Where was the first place she stayed at after the separation?

A My brother's house.

Q And that would be . . .

A . . . Monty Newby.

Q Where is Monty's house located with reference to the place where she and Robert Godfrey lived?

A It's about three miles north of us toward Rome.

Q Where did she go after she left Monty's house to stay?

A They spent, I think, one night down at my mother-in-law's.

\* \* \* \* \*

### TESTIMONY OF JACKIE NEWBY

#### DIRECT EXAMINATION

BY—MR. PERREN

\* \* \* \* \*

Q And since that time where has Tracey stayed?

A With Geraldine and Billy.

Q Do you know whether or not any examination was made at that time there by the doctor and yourself as to whether or not there was a possibility of her having a concussion?

A No skull x-rays were made but he asked her if she had lost consciousness at any time.

Q Now, was she able to articulate to you at that time what had happened?

A Yes sir.

Q Do you know who the police officers were that came there, that arrived at the time you and Dennis got there?

A No, I don't.

Q Now, from the time September the 5th until the night of the 20th when Mildred and your grandmother were killed had you had occasion to see Robert Godfrey at

any time during that period?

A Yes sir, I saw him several times.

Q And where, and under what circumstances, did you see him several times Mrs. Newby?

A I saw him out in his yard several times. He came to our home one time.

Q And when he came to your home do you have any idea how long that was before the shooting incident there at your grandmother's trailer?

A I don't know exactly. I'd say maybe a little over a week. I'm not sure.

Q And at that time did he engage in conversation with you and your husband or anyone there in your presence regarding the problems that he and Mildred were having?

A Briefly.

Q What, if anything, did he say?

A He came to ask my husband to sign the bond, a bond for the warrant Mildred had.

Q Did Dennis sign the bond?

A No, he didn't.

Q Now, at that time how long were you around him? That is when he came and wanted Dennis to sign the bond?

A I'd say at the most it was thirty minutes that he stayed.

Q At that time did you have an opportunity to observe him and his conduct and mannerisms and such as that, his speech and talk?

A I was in the same room with him.

Q Well, how long had you been acquainted with him?

A Approximately ten years.

Q And during that time had you seen him on a number of occasions?

A In the ten years?

Q Yes.

A Yes sir.

Q From having observed him over ten years on a number of occasions and from having seen him a short time, a week before this shooting incident occurred, and on these other occasions, did you come to some opinion as a layman and as a registered nurse as to whether or not he knew the difference between right and wrong?

A Yes sir.

Q What was your opinion about that at that time?

A He definitely knew the difference between right and wrong.



Q And from your observation of him over a period of years and having seen him on this occasion a week approximately before this shooting incident occurred did you come to some conclusion a week before the shooting incident as to whether or not he was sane or insane?

A He was very sane.

Q When you observed him there sitting in a chair when you came from your friend's house that night with Dennis and you saw the scene that you have described there in your Granny's trailer did you have, from your observation of him sitting there in the chair, did you form any opinion of what he was doing at that time as to whether or not he knew the difference between right and wrong at that time?

A I would say that he knew the difference. I did not speak to him.

Q And how long had it been prior to that time since you had last seen him?

A The day before.

Q Where did you see him the day before?

A He was out in his yard.

Q What was he doing out in his yard?

A Walking around, picking up rocks. I don't know. He was always working out in the yard.

Q Doing little ground keeping things that we all need to do around the yard?

A Right.

Q Had you . . . within a period of some two or three weeks prior to this incident on the 20th of September had you any occasion to hear him say anything or make any threats concerning Mildred?

A I did not personally hear him make any threats. I did speak with him about Mildred though.

Q What did you speak with him about Mildred about?

A He called my house and asked to speak to Dennis. Dennis wasn't there and he said "I guess you know Mildred has asked me for a divorce" and I said "yes, I have". He says, "well, I'm not going to contest it in any way, I'm not going to cause any argument", and he asked me if we wanted to buy the house, his and Mildred's house, and he quoted a price. He said "all I want out of is to pay my bills".

Q What did you tell him at that time about Mildred?

A I didn't say anything about Mildred.

Q How long was this before Mildred's death?

A Maybe a little over a week. I don't really remember.

Q Now, at that time from the conversation that you engaged in on the telephone with him, and from that conversation the pricing of the house, the discussion of the divorce and such as that, did you have an occasion to form an opinion as to whether or not at that time he knew the difference between right and wrong?

A Yes, he knew the difference between right and wrong.

Q Did you have an occasion to form some opinion at that time as to whether or not he was sane or insane?

A I had no reason to believe he was insane.

Q Well, did you form an opinion as to whether he was or not?

A He was sane.

MR. PERREN: You may examine the witness. Excuse me, just one other question.

Q When you saw Mildred there at your Granny's trailer on the evening of the 5th, Labor Day, do you recall how she was dressed?

A She had on slacks. She always wore slacks. I don't remember what color.

Q Do you recall whether or not those slacks were intact or not? If there was any damage to them that was apparent from your observation of the slacks?

A The slacks were intact that she had on when I saw her.

\* \* \* \* \*

## TESTIMONY OF CHARLES E. HUNT

### DIRECT EXAMINATION

BY—MR. PERREN

WITNESS—MR. CHARLES E. HUNT, duly sworn.

Q Would you state your name?

A Charles E. Hunt (H U N T).

Q Mr. Hunt, where do you live?

A Cherokee Road, Polk County, Cedartown, Georgia.

Q Do you hold any office in Polk County of any of the militia districts of this county?

A Yes sir. I'm Justice of the Peace, District 1570.

Q And what area of the county is the . . . District 1570?

A Yes sir.

Q What area does it cover?

A Basically the area north of the city limits of Cedar-town.

Q In your capacity as Justice of the Peace for the 1570 Militia District did you have an occasion, or have you had an occasion to become acquainted or have some contact with a Mrs. Mildred Godfrey?

A I did sir.

Q Do you recall when that was?

A I have a warrant that I issued her sir if I may refer to it.

Q Do you have the warrant or a copy?

A I have a copy sir.

Q I want to show you a paper, a document, which has been identified as State's exhibit number one (S-1). I'll ask you whether or not you recognize that document?

A I do sir.

Q What is that sir?

A Sir, it is a warrant charging aggravated assault.

Q And when was that warrant issued?

A The 5th day of September 1977.

Q Does it show a time when it was issued?

A Yes sir. Between the hours of 6 P.M. and 7 P.M.

Q Now, at the time that warrant was issued was an affidavit made to you by some one in order to cause the issuance of that warrant?

A It was sir.

Q Who made that affidavit?

MR. HOLMES: Your Honor please.

THE COURT: Yes sir.

\* \* \* \* \*

Q And for whom was the warrant you issued on September the 5th issued at the instance of Mildred Godfrey?

A Robert F. Godfrey.

Q Where were you when that warrant was issued?

A I was at the Minit Shop on North Main in Cedar-town, Georgia.

Q And at that time do you recall who was with Mrs. Godfrey?

A No sir, I do not.

Q Did you have an occasion to make some observation of her at that time?

A Yes sir, I did.

Q What, if anything, did you observe about her?

A Mrs. Godfrey seemed to be in a state of turmoil, she was very upset, she was extremely nervous.

Q At that time did you have an occasion to make any observation of her clothes she was wearing?

A Yes sir, I'm sure that I observed she was wearing clothing but I could not state the condition of the clothing that she had on.

Q And what was done with the warrant when you issued it?

A Mrs. Godfrey requested that I give it to her.

Q And did you do so?

A I did sir.

\* \* \* \* \*

# TESTIMONY OF CATHY VENABLE

## DIRECT EXAMINATION

BY—MR. PERREN

\* \* \* \* \*

Q Why did you feel that it would make him mad if you, his child, Dennis his cousin, or Billy his brother, came to his house?

A Because we went up there to help my mother to get out of the house and we knew it would make his mad. He had been drinking.

Q Did he drink very often?

A Well, yes, off and on. There was a few years where he didn't drink at a time but I knew that he had been drinking, you know, for the past year.

Q Did he drink excessively in your opinion?

A I don't know how much he drank but I knew that he drank. You could tell when he had been drinking.

Q When he was drinking did he have a vent or propensity toward violence?

A He was argumentative when he had been drinking.

Q Now, when you saw him that afternoon of the 20th he passed by the roadway there?

A Yes.

Q During the last . . . how old are you?

A I'm twenty three.



Q During the last five years has your daddy did anything at any time in your presence, conducted himself in a way at any time in your presence, or said anything in your presence or hearing that indicated to you that he had some mental disorder?

A Well, I lived with him for eighteen years I just always accepted the way he was as the way he was. Sometimes, you know, sometimes I would think that he was mean but he was usually drinking if he was mean or arguing.

Q During all of these times in all of these years did you have an opinion concerning his ability to distinguish between right and wrong?

A I've heard my mother say that he didn't know right from wrong.

Q When did you hear that?

A The last time I heard her say it was when she talked to him on the phone Labor day.

Q Labor Day. And what had he done? What did she tell you?

A She had had a conversation with him on the phone and when she finished . . . when she got off the phone with him I asked her what he had said and she first said that his mind was warped he didn't know right from wrong.

Q Well, how did he act as far as knowing right from wrong?

A Well, he did some mean things when he was drunk before but I think he knew right from wrong.

Q Well, when he got sober after doing mean things what did he . . . did he remember the mean things he had done?

A He's said that he doesn't remember when he was drunk. He always said he didn't remember.

Q Did he apologize for the things he done when he would get drunk?

A After he was sober and come back home, if he had been sent away or something, yes.

Q Would he say he was sorry?

A Yeah. He would admit that he had done them but he'd say he doesn't remember doing it and he would apologize.

Q Now what . . . do you know how often he worked, whether he worked regular or whether he was out of work a lot, or what?

A Well, he was out every now and then. I wouldn't say

he stayed out a whole lot.

Q Do you know anything about what he did, or what his duties were at the hospital in Rome?

A No, not really.

Q Now, on the night of the 20th when was the last time you saw your mother?

A Well, the sun was going down. I don't know exactly what time but the sun was going down and it wasn't long after that that it was dark.

Q Where did you see her?

A They were in the living room of the trailer.

\* \* \* \* \*

### CROSS EXAMINATION

BY—MR. HOLMES

\* \* \* \* \*

Q After your parents separated in early September did you see your father?

A Yes.

Q How often?

A I would see him come in from work almost every day because I was off from work that week.

Q Did you have any conversations with him?

A He would stop for a few minutes when he come in from work and I might talk to him five or ten minutes.

Q Do you think that he was distressed that he was going to get a divorce?

A Yes, I think he was unhappy.

Q In the past when you and your older sister . . . you have an older sister?

A Yes sir.

Q How old is she?

A She's twenty five.

Q Is she married?

A Yes sir.

Q In the past when you and your sister married and left home what affect did that have on your father?

A Well, I know when my older sister got married he refused at first to go to the church and give her away and then the day of the wedding he changed his mind and got dressed and went, and I got married at home. I don't think that he not wanted us to get married but he was sorta disagreeable, I think, maybe.

Q Did he want to see . . . did he object to seeing his family breaking off and going in their own directions?

A He might have. I really don't know.

Q Did your father throughout your life. . .

A . . . Sir?

Q Did your father throughout your life, as you observed him, seem to you to be a different person in his actions when he was drinking than when he was not?

A Yes sir.

Q How did that manifest itself? What would he do . . . how would he act when he was drinking as opposed to when he was not drinking?

A Well, he was mean when he was drinking.

Q How did he treat you and the family when he was not drinking?

A Well, he never whipped any of us at home that I can remember. When he was drinking, it was mostly my mother that he was mad toward when he was drinking. We sorta didn't say anything when he was drinking because we knew we might make him mad.

Q When he was drinking did he have a tendency to lose his temper?

A Yes sir.

Q Did he have that same tendency when he was not drinking?

A He had a temper, yes sir. I never saw him beat on my mother when he wasn't drunk.

Q You're aware that your father has been committed to Milledgeville on three occasions?

A I know of two.

Q You know of two?

A Yes sir.

Q If the first one was in the '50's then you wouldn't have any memory of that?

A I don't think so.

Q When were the other times? Do you remember approximately?

A Once he was sent off in 1966 and once in 1971.

Q Do you remember how long he stayed off?

A I think it was about a month each time.

Q What time of year was it?

A It was in the summer time both times.

Q Was his drinking . . . his problems caused by his drinking worse in the summer than in the winter months?

A Yes sir.

Q What would he do in the summer that he didn't do at other times?

A Well, of course in the summer he went fishing some times and he usually drank when he went fishing and in the winter time . . . he didn't go fishing in the winter time, but it would be hot in the summer and it would just seem more reasonable to drink beer in the summer time because it's hot. Of course he drank in the winter too but he didn't usually have any bad spells in the winter that I can remember.

Q He would have his bad spells, you'd say, in the summer?

A Yes sir.

Q Are you aware that your father has got pretty serious problems with hypertension?

A I know he has high blood pressure, yes.

Q Has he had it for some time?

A Yes.

Q Do you know how long?

A I can remember his having it ever since we've moved to Collard Valley.

Q How long ago was that?

A Since 1966.

Q Do you remember that he has been in the past on constant medication?

A I knew he had medicine for it, yes.

Q Even though under medication for it has he had spells where he was unable to function, unable to go to work because of it?

A Yeah, I can remember times he's stayed out because his blood pressure was up.

Q Are you aware that your father is a diabetic?

A Yes sir.

Q Do you recall when they tried to treat him with insulin?

A Yes sir.

Q What happened?

A Well, he didn't use it for very long. I think he had a reaction from it or something and he quit taking it.

Q And he was not able to take insulin?

A No.

Q After your parents separated do you know whether or not your father wanted to reconcile with your mother?

A I know that he would have, yes. He would have.

Q Had he always done so in the past?



A Yes.

Q Do you know whether or not there was ever . . . at any time do you remember any other woman with your father except your mother?

A I've been told that there has been some but I never . . . I know there was one time once before when another man come to the house, it was while daddy was sent off, and talked to my mother about his wife having been off with my daddy years ago.

Q Each time that your father was sent off was he sent off by your mother?

A I'm not sure who all had him sent off but I know that my mother would always have to sign something to get him sent off.

Q After a period of treatment did your mother always agree for him to come back home?

A Yes, he always came back home.

Q In the period of time after their separation in September, in the week or two after the separation, do you know whether or not your parents discussed reconciling?

A I know that he called her, you know, nearly every day to ask her to come back home. She told me that he would call nearly every day.

Q Did you think your father was distressed at the possibility of losing his family, his wife and his home?

A Yes.

Q After the police arrived on the night of the 20th of September I believe you said that you saw your father out in the yard sitting in a chair?

A Yes sir.

Q What did you observe him to do?

A Well, as soon as I saw the police get out and that they were out there where he was at I went out of the house and he started walking toward . . . like he was going to walk back up the hill and I ran out to the trailer where the policemen were.

Q Did you see what your father did after that?

A Well, he walked back up to the tree where he had put the gun and then they put him in the car and they took him off.

Q Did he appear to be drunk at that time?

A I wasn't close enough to see him that well. I thought he was.

Q You thought he was?

A Yeah.

Q From past experience?

A Yes.

Q But you didn't smell any alcohol on his breath?

A I didn't get close enough to him to smell.

Q Well, what you mean is you thought he must have been?

A Yes sir.

Q Had you been up to your parents house in the week or so, or several days, before the shooting on the 20th, while they were separated?

A Yes. Me and my little sister would go up there and get some things while he was out at work.

Q Did you see whether or not . . . any evidence of your father having a big stock of beer in the refrigerator at that time?

A I can remember three beers being in the refrigerator.

Q And when was that?

A Well, each time we went up there I would check to see if there was a lot in the refrigerator and there was always three beers.

Q Do you think they were the same three beers?

A They were in the same place.

Q Would they be the same brand?

A Yes.

Q After the shooting did you have an occasion to go to the house again?

A Yes.

Q And when was that?

A It was . . . well, my little sister got some more things and she went to my aunt's house. We went up there and we started moving things out of the house when we decided that he was going to let us have it and get rid of it.

Q O.K. What did you observe in the refrigerator then?

A Three beers.

Q In the same location?

A Yes.

Q As you had seen your father in the week or two prior to September the 20th had he been drinking or was he drunk on any occasion for several days or a week before?

A I don't remember recognizing that he had been drinking. I didn't notice it.

Q You're familiar with your father's appearance when he was drinking?

A Yes.

Q You didn't observe him to have been drinking during that period of time?

A I didn't. My little sister said he was. I can't remember going up there that often. When I was working I didn't go up there that often. It was just when I had supper done and didn't have nothing to do I'd walk up the hill.

Q What was done with the house?

A My father signed it over to us and we sold it.

Q You sold it to who?

A Bill Casey.

Q What was done with the proceeds from the house?

A We split it between the four of us children?

Q What was done with the rest of the property?

A Well, we sold all of it. When we sold the house we sold all the land with it. You mean the things that were in the house?

Q The automobile and things of that nature.

A Well, my brother kept my father's car and I've got my mother's car. My brother had to pay some off on the Mercury to keep it. There was some owed on it. And we sold some of the stuff out of the house and then we put some of it in storage that we didn't want to get rid of, and I've got some of it in my own house.

Q And the money that you got from selling the house and the land and all of that was split between you children?

A Yes.

Q Is that what your father wanted you to do?

A Well, my brother had talked to him about it before I even come up here to see him and he said that he agreed to let us have it.

MR. HOLMES: That's all I have.

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### TESTIMONY BY MRS. GERALDINE GODFREY

#### DIRECT EXAMINATION

BY—MR. PERREN

WITNESS—MRS. GERALDINE GODFREY, duly sworn.

Q State your name please?

A Geraldine Godfrey.

Q Where do you live Mrs. Godfrey?

A Route 1, Cedartown, Collard Valley Road.

Q What was your relationship to Mildred Godfrey?

A Sister.

Q How old was your sister?

A Forty six in June.

Q And what was your relationship to Mrs. Chessie Wilkerson?

A She was my mother.

Q How old was your mother?

A Seventy two in September, September the 8th.

Q How far was your home from the home of your mother?

A Oh, around the road it would probably be maybe a mile, maybe not that far. It was really just over the hill.

Q And who is your husband?

A Billy Godfrey.

Q What relationship is he to Robert Godfrey?

A Brother.

Q Mrs. Godfrey, on Labor Day, September 5th, 1977 did you have an occasion to see your sister Mildred Godfrey?

A Yes sir.

Q Where did you see her on that day?

A I went down to my mother's and she came down from her house to mother's.

Q And did you have an occasion to talk with her at that time?

A Yes. I talked to her and I took her to Charlie Hunt's to get a warrant.

Q Now, had you been, at any time that day, to the residence of your sister and Robert Godfrey?

A No sir.

Q When was the last time that you saw your sister and Robert Godfrey together?

A The day before at my home.

Q Now, on this Sunday, September the 4th, at your home what time was it they were there at your home?

A It was in the evening between seven and eight, before dark.

Q And at that time can you tell us whether or not there was any argument developed between them?

A Well, it was just a few hard words about the light bill. He wanted her to pay the light bill, which I believe was about two months, about two hundred dollars and she said she would not pay it.

Q Now, when you saw her on the 5th and carried her to see Mr. Hunt did you see any clothing of hers?

A Not that day.

Q Did you have an occasion to see some clothing of hers at some later time?

A Yes.

Q When was that?

A It was after they were killed.

Q Where did you see that clothing?

A At mother's trailer.

Q And did you obtain that clothing?

A Cathy gave them to me.

Q Cathy who?

A Venable.

Q And since that time have those items of clothing that Cathy gave you been in your possession?

A In my closet in my bedroom.

Q How long was it after your mother and sister's death was it that this clothing was given to you by Cathy?

A It's possible that it was before they were buried but I'm not sure. It was just three or four days. Very shortly afterwards.

Q Now, did you have an occasion to observe Mildred on the 5th when you carried her to the Justice of the Peace to obtain a warrant?

A Yes sir. Her nerves were just all to pieces.

Q After that episode on the 5th day of September did you have an occasion to see Mildred again before her death?

A Yes sir.

Q When was that?

A Well, they stayed with me Labor Day night, mama, Tracey and Mildred did. They were there the next evening and I saw them two or three times later when Tracey would get off the bus at the house and they would come pick her up.

Q Now, do you know . . . where did Mildred stay after the night she and Tracey and your mother spent with you, the night of September 5th?

A They went to Preacher Pierce's in Rockmart, Jackie Newby's parents, and they stayed maybe two or three nights there, then they went and stayed a few nights with my nephew, Monty Newby, and then they came back home later.

Q Do you know how long your sister and your mother

had been back home staying at your mother's house trailer before they were killed?

A Not exactly, no sir. It may have been a week or it may not have been that much. I don't remember exactly.

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## TESTIMONY OF TRACEY GODFREY

### DIRECT EXAMINATION

BY—MR. PERREN

\* \* \* \* \*

Q I'm not sure, about four or five . . . maybe . . . about three or four days.

Q Three or four days. Where was your house? Where did your mother and daddy live when they were living together?

A Up the hill from my grandmother.

Q Was it very far?

A No sir.

Q Could you see your house from your grandmother's trailer?

A Yes sir.

Q Now, when did you and your mother leave the house where your daddy lived?

A September the 5th.

Q And was that some sort of holiday?

A Labor Day.

Q Labor Day. Did you have to go to school that day?

A Yes sir.

Q And what happened Labor Day that caused your mother and you to leave?

A My father got drunk and he was threatening my mother.

Q How was he threatening your mother?

A He pulled a knife on her.

Q Did he use the knife in any way?

A He cut her clothes.

Q Where did he cut her clothes?

A I don't know. He took her in the bathroom and I didn't see him.

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## TESTIMONY OF SEALS MINSHEW

## DIRECT EXAMINATION

BY—MR. PERREN

\* \* \* \* \*

Q Now, what caused you to go to this particular place at that time?

A We was dispatched by our office by radio transmission to go to this place.

Q Now, when you arrived there who was there?

A Mr. Robert Godfrey was there.

Q Where was Mr. Godfrey when you first observed him Mr. MinsheW?

A Sitting beside a big oak tree approximately fifty yards from the trailer.

Q And when you arrived there and saw him were you aware of what had happened?

A Yes sir, my partner had already left the car and went to the trailer and found two white females that had been shot?

Q Now, after you had seen this did you make any . . . did you approach Robert Godfrey?

A Yes sir, I did.

Q Or did he approach you?

A I approached Mr. Godfrey.

Q At that time did you interrogate him in any way?

A No sir, I did not.

Q When you approached him there at the scene what, if anything, did he say to you?

A Mr. Godfrey was sitting in a chair beside the three when I approached him and he called my name and said "there's no need of going to the trailer they're dead, I killed them".

Q Now, at that time did he have any weapon?

A No sir, he did not.

Q Who was your partner?

A Patrolman McLendon was with me.

Q At that time did you make any search about the premises there for any weapon?

A No sir, I did not.

Q Was any weapon produced?

A Yes sir, Mr. Godfrey showed me where the weapon was.

Q Now, did you ask him where it was?

A No sir, I did not.

Q How did he go about showing you where the weapon was?

A He told me that he'd show me where the weapon was and he did.

Q And at that time had you interrogated him at all?

A No sir, I had not.

Q Did you interrogate him at all?

A No sir, I didn't.

Q Now, where was this weapon?

A It was also approximately fifty yards from where he was sitting in an apple tree. It was in the fork of an apple tree.

Q How far was this apple tree from the trailer?

A Approximately fifty yards also. It was in a little triangle shape.

Q . . . He recognized you?

A Yes sir, he called my name.

Q Were you in uniform?

A Yes sir, I was.

Q How long have you known Robert Godfrey?

A I've been knowing Robert for a good while. I mean, we're not what you call . . . see each other very much. I just see him around that's all.

Q And during the time that you have seen him around, the length of time that you have known him, have you paid any attention to the way he acted, conducted himself?

A No sir, I haven't.

Q Was his actions at any time while you were around him ever such as to draw your attention to him?

A No sir.

Q When he was seen by you there at Mrs. Chessie Wilkerson's trailer did you notice anything about him that particularly attracted your attention by his mannerisms, his actions, his conduct, or his speech?

A No sir.

Q From observing him and being with him at that time do you have some . . . or did you arrive at some conclusion or opinion in your own mind as to whether he was sane or insane at that time?

A In my opinion he was sane.

Q And at that time did you arrive at some opinion there at the scene as to whether or not he had the mental capacity to distinguish between right and wrong?

A Yes sir.

Q What was your opinion as to whether or not he had the mental ability to distinguish between right and wrong?

A In my opinion he knowed right from wrong.

MR. PERREN: That's all the questions I have.

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### TESTIMONY OF J. K. McLENDON

#### DIRECT EXAMINATION

BY—MR. PERREN

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Q What time of the night was this approximately Mr. McLendon?

A Approximately eight forty five (8:45).

Q Now, at that time, after viewing the scene, did you participate with Patrolman Minshew in bringing Robert Godfrey, the defendant, back to the county police headquarters building?

A Yes sir.

Q Now, while he was there at the police headquarters building did you interrogate him or question him?

A No sir.

Q What did he do while he was there?

A He asked me for a cup of coffee and I got him a cup of coffee.

Q Where were ya'll at that time?

A We were in the back part of the kitchen.

Q And was he handcuffed?

A No sir.

Q When you got him a cup of coffee did he drink it?

A Yes sir.

Q What was the manner in which he was acting, conducting himself at that time?

A He was real calm and collected.

Q What, if anything, did he say to you there while he was drinking his coffee?

A He told me . . . he looked at me and he said "Mack, I've done a hideous crime," he says, "but I've been thinking about it for eight years". He said, "Id do it again".

MR. PERREN: I have no further questions.

### CROSS EXAMINATION

BY—MR. HOLMES

WITNESS—MR. J. K. McLENDON

Q Mr. McLendon. . .

A . . . Yes sir.

Q When you got to the scene did you see the defendant then?

A No sir, not when. . .

Q . . . When was the first time you saw the defendant?

A When Officer Minshew had him in custody.

Q Where was that?

A I went to the trailer and saw what had happened inside and I turned around immediately and sealed the trailer, when I turned around I saw Officer Minshew with Mr. Godfrey back . . . they were behind the patrol car then.

Q And then did you proceed out to the patrol car?

A No sir.

Q At that time?

A No sir.

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### TESTIMONY OF MRS. JEAN LEBKICHER

#### DIRECT EXAMINATION

BY—MR. HOLMES

WITNESS—MRS. JEAN LEBKICHER, duly sworn.

Q Would you state your name please mam?

A Jean Lebkicher (L E B K I C H E R)

Q Where do you reside Mrs. Lebkicher?

A Rome, Georgia.

Q And what do you do for a living?

A I'm director of nursing at Northwest Georgia Regional Hospital and coordinator of clinical services.

Q In that capacity have you had occasion to know the defendant Mr. Robert F. Godfrey?

A Yes sir, I've know him off and on since 1953, while he was employed at our hospital.

Q How long . . . has he been employed off and on since then?

A Almost consistently. He's had two resignations during that time, which one time he went with an insur-

ance company for a short period of time, and another time, as I remember, he went with a textile mill for a very short period of time. Each time he returned back to the hospital.

Q Have you had occasion in that period of time to be associated closely with Mr. Godfrey?

A At one time I was the operating room supervisor and he worked directly under me, as director of nursing, of course, he's always worked under me but through another supervisor.

Q Throughout that period of time what type of work did he do at the hospital?

A In the operating room, of course, he served as an assistant to the surgeon in helping to apply casts, he did work in our work room putting up packs, he was called upon to assist in the recovery room and things of this kind. In the hospital in general he's worked on several of our units in caring for patients. His last assignment was in our Infirmary Intensive Care Unit. He's always been dependable, and very kind to patients, and has rendered excellent nursing care to patients.

Q Have you through this association had occasion to form an opinion as to his character?

A I can only say what I've seen in the hospital. He's been dependable, he's been trust worthy, he's been kind, he's been compassionate toward the patients, and of course these are the things that we're looking for in the hospital. We're there for one purpose and that's patient care as, as far as his character in patient care there's never been any problem.

Q Can you tell us whether or not you would believe the defendant under oath?

A Yes. I have never found him to lie to me at any time in all the years I've known him so I would have no reason to distrust him.

MR. HOLMES: Your witness.

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### TESTIMONY OF DR. JOSEPH LIANG

#### DIRECT EXAMINATION

BY—MR. HOLMES

WITNESS—DR. JOSEPH LIANG, duly sworn.

Q Would you state your name please sir?

A Joseph Liang (L I A N G)

Q What is your profession?

A I'm a physician.

Q Dr. Liang, where are you employed?

A By the State of Georgia, the Northwest Georgia Regional Hospital.

Q And how long have you been employed there?

A Since August, 1957.

Q And in what capacity have you served?

A I was employed as chief of surgery in the hospital.

Q You have worked in the hospital and have you had occasion to know the defendant Robert F. Godfrey?

A Mr. Godfrey, I've known him since the latter part of 1958. He worked very closely with me in the operating room for maybe ten years and later on he worked . . . I still know him, he worked in the ward and I have been in contact with him all this time, until I became sick in June 1977.

Q Doctor, what is your opinion of his work at the hospital during that time?

A I think he performed his job very well and I've always found him to be courteous and very good to the patients.

Q In this time that you have worked with Mr. Godfrey have you had occasion to form an opinion as to his reputation there where he worked in the community?

A You mean reputation in regard to his work?

Q Yes sir, and just in general.

A In general I think he has a very good reputation. He's a good worker in the hospital.

Q Would you believe the defendant, Mr. Godfrey, if he said something while under sworn oath?

A Yes.

Q Do you have any reservations at all about taking his word or relying on his word?

A I do.

Q You would?

A Right.

MR. HOLMES: You may question the witness.

#### CROSS EXAMINATION

BY—MR. PERREN

WITNESS—DR. JOSEPH LIANG

Q Dr. Liang, you have no knowledge whatsoever con-



cerning his general reputation within the community where he lives do you?

A No. I understand that he lived at one time in Rome for a short time but I thought he always lived in this community, not in the Rome area.

Q Now, you do not know anything about his general reputation in the community where he lives do you?

A No.

Q Your knowledge of him has been restricted to his function there in the hospital?

A That's correct.

Q Now, you have observed his functions over a period extending from 1958 . . .

A . . . '57, August '57.

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### TESTIMONY OF DR. WILLIAM S. DAVIS

#### DIRECT EXAMINATION

BY—MR. HOLMES

WITNESS—DR. WILLIAM S. DAVIS, duly sworn.

Q Would you please sir state your name and address?

A Yes. William S. Davis, and I practice at 1970 Cliff Valley Way, Northeast in Atlanta.

Q What is your profession?

A I'm a physician specializing in psychiatry.

Q What is your educational background and training please sir?

A I graduated from medical school at Vanderbilt University School of Medicine in 1956. I interned at the University of Mississippi Medical Center in 1956 and '57, following which I did general practice in Jackson, Mississippi for four years. In 1961 I left Jackson and went to Kansas City, Missouri where I took three years of specialty training in psychiatry and upon completion of my residency, the three years of specialty training I left Kansas City and moved to Rome, Georgia where I practiced general psychiatry in the Harbin Clinic for about eight years until . . . 1964 and eight, 1972. At which time I left Rome and then went to Atlanta where I've been practicing since.

Q You're licensed to practice medicine in the State of Georgia?

A Yes sir. I'm licensed to practice medicine in the State of Georgia. I'm certified in Psychiatry by the Ameri-

can Board of Psychiatry and Neurology. I'm a fellow of the American Psychiatric Association. I'm a clinical assistant professor of Psychiatry at Emory University School of Medicine, past president of the Georgia Psychiatric Association.

Q Dr. Davis, in the past have you had occasion to treat the defendant Robert F. Godfrey?

A Yes sir. I had occasion to treat Mr. Godfrey when I was practicing in Rome.

Q And what was the general nature of your treatment and his problem at that time?

A Well, the problem was two fold, well maybe three fold, but the initial problem for which I saw Mr. Godfrey was alcohol abuse. He had been drinking heavily and I hospitalized him and detoxified him from alcohol and withdrew him. He had a rather hard time with the withdrawal but we got through that and after the withdrawal was completed then he was right severely depressed and I saw and treated him for his depression after he got out of the hospital, and associated with, I guess, both the alcohol and the depression was a great deal of marital disharmony he was having. It seems that his wife really objected to his drinking. She objected to his drinking any at all and made her objections known quite vocally and I suppose her feelings about it back even that far ago were that she was seriously considering leaving him even back then, you know, if something couldn't be done for his drinking.

Q Have you had occasion to see him since that time?

A Yes. I had not seen him for a number of years, since I moved from Rome, until I saw him in my office, I believe it was the 24th of last month, February.

Q That was pursuant to an order of this court?

A Yes, that was. That was on order of this court to examine him, I guess, with reference to the matter that we're talking about now.

Q What was the nature of your examination?

A I did a psychiatric evaluation, psychiatric examination, as I . . . you know, as I do on all patients that I have seen. Of course having already seen him and known him I knew, you know, a good bit about him and maybe there were some things that I didn't do, but I sat down and interviewed him, took a history, actually attempted to take a history dating back essentially from the time that I stopped seeing him in Rome until the present time. During the course of the history made observations as to his abil-

ity to think, his ability to reason, his memory, his recall, his orientation as to the time and place, of course as to whether he knew where he was and what time it was, and the day of the week it was, and whether he knew what we were talking about with regard to the charges that had been filed against him. I observed him for signs and symptoms of anxiety, also observed his expressions and facial movements as he talked, made particular notes with regard to how he was able to put a thought together, was he able to tell it in logical sequence or was his thinking scattered and disorganized, checked his ability to remember specific facts, general information, and I think some simple calculations that we had gone through. These are the sort of routine things you do in the course of an examination.

Q You're aware doctor that the defendant is charged with killing his wife and his mother-in-law on September 20th of last year?

A Yes sir, that's what he told me.

Q Now, what specifically concerning the history interview of the defendant . . . what specifics did you get into relative to the incidents alleged in the indictment?

A Well, in the course of taking the history from Mr. Godfrey we recounted . . . he recounted to me actually a continuation of the same general kind of pattern that had been established at the time I saw him in Rome, with his drinking periodically, his wife objecting to this, their arguing at times about it, her saying that she was frightened of him, and at times saying that he was violent, and then his, as he was in Rome, sort of down playing the extent to which he drank and the extent of the violence. One thing which I do recall rather outstandingly vividly in the course of seeing him while I was in Rome was that her accounts of the violent episodes were much greater than were his, as was her account of how much he was drinking. But anyway, be that as it may, he went through the history of their marriage which was essentially as it had been, the history of his work at which he was progressing reasonably well, he related to me of course that he had been ill and that while he had formerly worked at two or three jobs that because of his diabetes and high blood pressure he had been required to cut back to where he was working only at what is now the Northwest Georgia Regional Hospital, formerly it was Battey where he had worked for a number of years. He, you know, gave a medical history of

having some problems with his blood pressure, he had had trouble controlling the blood pressure, it had been 200 . . . 180 to 200, the upper level of blood pressure, the systolic blood pressure, and had ranged from . . . oh, 100 to 135, as I recall, at the lower level or diastolic blood pressure. He could sometimes get it down and maintain it around 140 to 150 for brief periods of time but then it would go back up to somewhere in the neighborhood of 200 again. Then he had also had a similar problem with his diabetes and I suppose that the two were connected in that the diabetes certainly does cause hardening of the arteries but he had been tried on Insulin and had an allergic reaction to the Insulin and broke out all over and was unable to take the Insulin and had been trying to control the diabetes with diet alone and had had some problems with that, and had had some . . . enough difficulty that he had been advised to cut back on his work and so he had just been working the one job. Finally the relationship between the two of them, to bring it on down to more current times, had become so strained and she had begun to, I guess, feel hopeless about his changing and had left. He had always in the past been able to persuade her to come back and be reconciled and they had either, I guess, separated or semi-separated any number of times. She had actually left or threatened to leave, and maybe had left a little bit any number of times but he had always persuaded her to come back, and he said to me that when she left this time he thought at first that it would be more or less like it had been before and that he would eventually, once she got settled down, be able to persuade her to come back and so he wasn't too concerned about it initially but as time went on she continued with her determination this time to leave and he became more and more concerned that she really was going to leave and was going to divorce him. And he recounted to me that as he began to believe that she intended to go through with the divorce that he really became quite depressed. It was as if his whole world was falling apart, like nothing meant anything other than, you know, than his marriage, if he couldn't have his marriage, if he couldn't have his wife then he really didn't care. He was able to recount a rather . . . well, a violent quarrel that they had had a week or two prior to September 20th in which she had filed, he said, charges of assault against him and following that quarrel said that he never saw her to talk to her again, that he tried on a number of occasions



to get to meet with her face to face but she would not, even so he still harbored the hope, maybe even the belief, that she would ultimately come back and that he would be able to reconcile with her. He carried this on up to the day on which the shooting occurred, and while at work that day he related that his mother-in-law had in fact called him and told him that his wife wanted to see him and he was very hopeful then. Within his own mind he had convinced himself that finally she was coming around and that she wanted to see him to tell him that there was some chance that they could get back together, and he worked the rest of the day, I don't remember how long that was, I can't recall when he said she called, but he worked the rest of that day convinced that when he got home that night and finally could talk with her that they were going to get their problems all resolved. He got home and . . . well, to make a long story short, a telephone call came from his wife, he answered the phone and she did not want to be reconciled but wanted to discuss the terms of the settlement which really upset and disappointed him, they couldn't agree, he said, he hung up the phone, or she hung up the phone and he did too, but she had told him before she hung up that she would call back later in the evening. He ate his supper, after they stopped the conversation, and was really feeling down but had hoped maybe that they could talk the second time. He ate and sat down to read and the phone call came again and it was again from her, the conversation went pretty much as it had been before, she did not want to reconcile, she wanted a settlement to which he would not agree and told her so. Finally he asked her one more time if they could not meet face to face to talk about it and she told him no she wouldn't meet with him face to face. The argument then, I guess, became, he said, more heated. Finally she just hung up the phone and at that point the realization that she meant business came through to him, and as he said he has never felt so hurt, so down, so low, so blue as he was the moment she hung up the phone and the realization hit him that she was, you know, dead serious about going through with the divorce and there was no chance for reconciliation at all. At that point he says he remembers hanging up the phone and doesn't remember anything else until the next day, the next morning, in jail.

Q Doctor, based on his relation of this history to you and your previous knowledge of him were you able upon

your examination to form any kind of opinion as to what the state of his mind was at that time or whether or not he was . . . what sort of state his mind may have been in at that time?

A At which time are you referring to now?

Q I'm speaking of on the 20th after the last telephone call.

A Yes. I decided that on the 20th after the phone call that he had a . . . what is known as a dissociate state, a dissociate attack, and that this attack lasted from the time that he first finally realized that she was not coming back home until he woke up the next day in jail and came back to his senses at that point in time. Looking back on it it seemed to me likely, what I had thought of, as being, you know, a person's attempt to deny . . . some of his drinking might very well have been also associated with some states of dissociation on down through the years culminating in this one final attack.

Q Did his history reveal to you any previous episodes that may suggest a blackout or an amnesia to any extent?

A Well, as I indicated he tried to make . . . always tried to make light of how much he drank. I wish maybe that I had been a little more critical in my thinking about it at the time that I was seeing him then, considering the circumstances now, and what I thought, or what I attributed to just the alcoholics tendency to deny his drinking which alcoholics are notorious for doing, probably were representative of states of dissociation while he was intoxicated and in an argument with his wife even back then, and that this one, though it was not under the influence of any alcohol was under the influence of the strongest most powerful emotion that he had ever felt and that was enough to trigger it at this time.

Q Doctor, if you would, for our benefit, speak more or less theoretically and if you could explain what a dissociate state is and whether or not that is a type . . . a psychiatric term that is well accepted in your specialty?

A All right. Yes sir, a dissociate state, I guess a dissociate state is the most common psychiatric condition which is known to be one of the most common non psychotic psychiatric conditions which is responsible for some alteration in consciousness. In a dissociative state a person can just actually cut off from his mind oh, stimuli such as say bodily sensations may not come through to awareness. He may cut off from his mind awareness of what's going on

around him, he may cut off from his mind memory, all of these things can be cut off from mind when in a state of dissociation. And in such a state a person may be able to carry out thoughts, feelings, impulses, which he could not release were he in his normal state of conscious awareness. I guess that you might say in that condition a person might act sort of automatically, that his will, if you will, his will was absent or greatly reduced may be an example. A couple of examples would help to understand exactly what I'm talking about, something that maybe most everybody has experienced, a mild state of dissociation happens to most all of us at times, occurs frequently when we're driving down an Interstate and we wake up seventy five miles down the road and the last thing we remember was an hour ago. The boredom of the road causes our conscious mind to go away and it splits off and we go down to road acting . . . driving O.K. but driving more or less automatically, not consciously aware of what's going on. Another example occurs maybe, it's happened to me and I'm sure to many other people too, where after, you know, getting up, leaving home and going to and from work over the same route for a number of years on a given weekend, or sometime when you're not going to work, you get up and leave the house, have no intention of going to work, get in your car and drive off and the next thing you know you're pulling up in front of the hospital, or you're pulling up in front of the job, or you're on a street headed to the job, you had no intention of going there, you were going actually maybe in the same general direction but some place else and not there. So again the state of dissociation occurs and your will, I guess, is impaired to the extent that you didn't will to go where you wound up. Well, those are minor examples of what dissociation actually is. Certain people then, when they are in a state of dissociation, under certain conditions do tend to become violent and this is very well known, very well recognized, and it's been written about by . . . gosh, hundred of authors. Certain people when they are provoked by strong emotions often times under the influences of an intoxicant will go into a dissociatable state and tend to become violent. This hardly ever happens. I guess nothing is never in medicine but it very rarely happens spontaneously. That is, you know, a person just doesn't walk down the street and without anything happening suddenly go into a dissociative state. Usually there has to be the strong emotional

provoking factor to occur. Frequently there is the presence of the intoxicant but not necessarily so. And then under the influence of those two things, those conditions, a person can go into a state of dissociation, can become violent, and then after the episode is over . . . well, certain people have no recall but the absence of recall is not always complete, some people can remember parts of it, some more than others, but a number of people in such a state have no recall whatsoever of what happened or what transpired during the time that they were in the state. That's what I think happened to Mr. Godfrey.

Q Now, if you would, in addition to what Mr. Godfrey was able to tell you, if you would, assume the facts that I will relate to you which have been related in evidence by the police officers who arrived at the scene there, that Mr. Godfrey was found within minutes after the shooting sitting out under a tree in his front yard and when the police officers got there he recognized one of them and showed them where the gun was which was over in another part of the yard up in an apple tree and that thereafter he made some statement to the police officers relative to his committing the crime, that he did kill . . . that a couple of the officers made statements to the effect that . . . one of them said that he related to them that he had been planning it or thinking about it, to another one he said "well, it's all over now, it's just over with", all of them described him as being in a very normal and calm state, he appeared rational to them, that he was not intoxicated, there was no odor of intoxicants on his breath, and I think I've related these facts to you previously. The question is, assuming those facts are true, is that consistent with the type mental state that you have described to us, or unusual?

A Yes, it is. A person in a state of dissociation can carry on a conversation and unless someone is familiar with dissociative states and happens to think about it they could appear to be, you know, reasonably normal or almost completely normal. One thing about that whole scene that really struck me as further, at least in my mind, evidence that he was in a dissociate state was his very mornealcy, if you will. The fact that he showed no emotional upset, that he was not torn up after having done such a thing as he did, the fact that he was very calm, very quiet about the whole thing, that in and of itself to me is abnormal. The fact that he appeared so normal in such conditions to me is abnormal and says to me that there was something, you



know, going on haywire inside his head. Whereas the feeling was split off from the action that he had actually done, it had been dissociated.

Q Now, your diagnosis in this case and the psychiatric foundation for such a state is based on the idea, I suppose, that there are states of consciousness and states of alternate consciousness, and states of sub consciousness.

A That's right. That's generall . . . well, that's not just generally accepted I think it's almost universally accepted in psychiatry to be true, and again I think every one has experienced the effect of strong emotion on consciousness. Anybody that's ever gotten really mad is certainly aware that in that state his conscious awareness is really pretty much limited because the emotion limits his ability to be aware of a lot of things that are going on around him.

Q Well, is a conscious state as opposed to being, so to speak, ruled by the subconscious, is a conscious state necessary to the performance of functions involving reason and intellect?

A Uh. Well, not necessarily so. I think when the conscious mind goes away, when the conscious of the mind, what we would call ego, are impaired when that portion of the personality which normally experiences checks and balances on behaviour is impaired, that portion of the personality which is influenced, for example, by conscious is impaired so that in that kind of condition a person would not have the same degree of control over his behaviour that he would if he were otherwise normally conscious and aware.

Q Now what, if any, bearing do you think the defendant's hypertension and diabetic condition, what relation do you think it would have to the past history that he has related to you of having blackouts or blacking out?

MR. PERREN: Your Honor, I object to that. There isn't any evidence thus far as to any past history of such things existing, and I object to it on the grounds further that it is leading.

THE COURT: Rephrase your question Mr. Holmes.

Q Doctor, have you . . . would you tell us whether or not from your treatment of the defendant, from your taking of his history, whether there's been any relation to you or any knowledge on your part of previous episodes of what I'd generally call a blackout, a blackout type of state?

A I asked him about this in the course of the examination and he related to me that he had had one or two occa-

sions at work where he had . . . I believe he said nearly blacked out. I don't believe he said he completely blacked out. I believe he told me that he nearly blacked out. In answer to that question he went on further to say that there had been several occasions when he had left work and had driven home and didn't remember anything that had happened from the time that he left work until he was driving up in his front yard.

Q Well, how does the disease of diabetes have any effect or any relation on that type of thing, do you know?

A Well, you know, people with diabetes can black out either one of two ways, I guess. They can either have their blood sugar incompletely controlled so that they were running high blood sugar and get into what would be known medically as diabetic acidosis and over a period of time actually go into a coma and pass out. That's not a sudden kind of thing and it wouldn't necessarily be something that would happen in a way like this. It wouldn't happen like that. It would come over a period of time with his diabetes out of control. The other thing that could happen as far as blackouts as related to diabetes is concerned, I suppose, is an insulin reaction, or not only insulin, it could be a reaction to some kind of synthetic insulin like drugs that people take to control their diabetes. Occasionally when a person takes those their blood sugar drops so low that they will black out completely. I don't think either one of those is particularly pertinent myself to this situation. The diabetes over a period of time does contribute to the production of arteriosclerosis, hardening of the arteries, which is associated almost always with high blood pressure and high blood pressure when it gets out of control can contribute to sudden blackouts, and perhaps some of the episodes that he was relating to me at work that had occurred over a period of the past two or three years had been the result of his relatively uncontrolled high blood pressure. I think that that certainly is a possibility. To look at that whole situation and tie it back in to the emotional factors I think that . . . Mr. Godfrey had always been a hard worker, he had never really been satisfied to work one job he had worked for many years at Battey State and then he'd coach wrestling and had wrestled himself, and had done other things so that he really was very busy and had always worked and prided himself in his ability to work and in doing a good job, and I think that it came as a real blow to him, a blow to his ego, if you will,

when he got sick and wasn't able to do that any more. And I think that this was a real emotionally upsetting factor to him when he got the diabetes and the high blood pressure and had to quit doing extra jobs, things that he really enjoyed, particularly the wrestling and coaching, this was something that was a real joy to him, that he really got a lot out of and it hurt him a lot not to be able to do that. I think that contributed to some of the stress that he was under during the past couple of years and might very well have by producing an increased level of stress contributed to the likelihood that he would have a "dissociative black-out".

Q Is absence of memory general indication of this type reaction in a dissociate state?

A Do you mean is it generally associated with it?

Q Yes sir.

A Oh yes, in almost every instance of a dissociative state there is some impairment of memory. It's not always complete but I would estimate that maybe probably a third, in round numbers, a third of the people that have dissociate states do have a complete absence of memory. Two thirds have some impairment and it may be from . . . well, you know, varying degrees but not complete.

Q Could you tell us please, in your opinion, after this emotional crisis you described, this provocation relative to the finality of the phone call with his wife, could you tell us what, in your opinion, what if any incapacity of his power to reason and control his actions, what, if any, impairment existed thereafter?

A Excuse me. I think you're asking me a question that I didn't think you were going to ask me so ask me again if you wouldn't mind.

Q I'm speaking of after the phone call with his wife. In your opinion was the defendant's mind or reasoning power to any extent impaired thereafter?

A After the phone call?

Q Yes sir.

A After the second phone call on the 20th you're referring to now?

Q Yes sir.

A O.K. Yes, I think that it was and it must have been because at that point in time he was . . . he remembers being . . . he remembers being overwhelmed with a feeling of despair. He remembers . . . well, he said it was like being kicked in the stomach, he said that he never . . .

he'd wrestled and he'd fought but he'd never been hurt physically anything like as badly as he was hurt when he finally realized that it was over. There was no chance for a reconciliation, and then he says to me that everything just sort of faded away, went black, and I think at that point his conscious . . . the over . . . the emotion, I started to say overwhelming emotion, and I think it was an overwhelming emotion, I think the emotion of the final finality of her rejection really did overwhelm him and he went into this state of dissociation.

Q Do you have an opinion as to whether or not his acts immediately thereafter that evening would be the product of his will?

A I think that these are acts that he could not have done had he been at himself consciously. I think had he been in his usual state of conscious awareness this act was at the time so abhorant to him that he could not have done it.

Q While someone is in this dissociative state can they exercise control over their . . . does their will, conscious will, have the ability to exercise control over their automatic actions?

A Not the same . . . No. Not to the same degree. Not to anything like the same degree as would occur when he was normally aware and alert.

Q When a person is in this type state do you have an opinion whether or not they are able to distinguish between right and wrong and to be able to consciously control their actions relative to that?

A I think they might know the difference between right and wrong but their ability to control powerful emotional forces acting on them is markedly reduced and I think in such a state a person might very well not be able to exercise control to such a degree that he could prevent himself from doing something which he knew was wrong.

Q After you had had the interview, I believe, on the 24th with the defendant did you see him on a second occasion?

A Yes, I did. I saw him again on the first of March.

Q Now, what was the purpose of the second visit?

A Well, as I was examining him the first time and had gone over and over and around and around and approached it from every possible way that I could to see that if there were not some avenue, I guess that's a good way to say it, some avenue that I could use to help prod his memory and



was not successful in doing so I got the idea that it might be helpful, so far as his memory of the situation is concerned if we could do an Amytal interview. Frequently people who are under the influence of barbiturates, Penothal or Amytal, will be able to recall things which they have repressed from their memory. He recounted, you know, lots of times that he had spent thinking over and over about what had happened and could not come up with any answers to it, he was obviously very pained because of what he had done, he felt a great deal of remorse about it but couldn't understand himself why he had done it and I guess for two reasons, one to see if he could recall the events that had transpired, and second to see if perhaps by understanding and recalling these to his conscious mind if it might not be able to help him to relieve some of the feelings of guilt and pain that he had. I suggested to him that maybe we could do an Amytal interview. I didn't. . .

Q . . . Doctor, if I could interject, when you suggested the interview to him. . .

A . . . Well, all I did was ask him if he'd do it.

Q And when you asked him that did you explain to him what the tests may. . .

A . . . Yeah, I told him. I told him at that time that the reason that I would do it would be to hopefully . . . that he might be able to recall under the influence of Amytal what he couldn't recall normally while he was awake, that I didn't know what he would recall and I didn't know what he'd say, that I certainly didn't know whether it would be something that would be helpful or beneficial to him considering his legal position at that time but that I could do it if he wanted to and he was very eager and very anxious to go ahead with it, even after I . . . you know, we had talked about it.

Q If under this type of sedation he had been able to recall the events what effect would that have had, in your opinion, on your diagnosis of his state?

A Well, I think that a couple of things. . .

MR PERREN: . . . Your Honor, I object to this based on a premise . . . it being based upon a premise which is not in evidence as to . . . it would call for actually an answer based on a hypothesis that is not present.

THE COURT: It did not occur?

MR. PERREN: Not according to testimony.

THE COURT: I sustain your objection.

MR. HOLMES: Your Honor, I think it's a proper ques-

tion because it's a question, not placing it in hypothetical as to whether or not anything is in evidence but simply trying to get a response as to what the effect of the test would have on the doctor's diagnosis if there was any ability to remember under the Sodium Amytal as opposed to the ability to remember while he's in a conscious state. I think it's strictly a medical question and a psychiatrist's question rather than a question of evidence.

THE COURT: You're asking him to compare what he would have determined by a positive response as compared to a negative response on this test?

MR. HOLMES: What that would have indicated to him medically.

THE COURT: I'll allow him to go into that.

A Well, at that point I was trying to determine, I guess, three things. Number one, whether or not he was telling me the truth. Number two, whether or not he had in fact had some kind of physical insult to his brain, maybe as a result of his hypertension, a small stroke, or I don't know what, but some kind of physical something that would have come about from the hypertension and/or the diabetes that might have produced blackouts conceivably when he was told . . . when he learned that, you know, he was not going to be able to reconcile with his wife, that must have undoubtedly done something to his blood pressure, it would most people's, I guess, in the fact of such strong emotion.

MR. PERREN: I'm going to object to that statement by the doctor as to whether it undoubtedly did.

WITNESS: O.K.

MR. PERREN: It's possible that it did not and I object to it.

A Well, anyway. . .

THE COURT: . . . Well, I'll allow the answer. I think it's maybe subject to cross examination.

A But in any event what I was trying to determine was whether or not possibly he had some organic injury to his brain that perhaps produced the blackout. And the third thing was to see if he could recall, which if he had would have been some . . . possibly have been substantiating evidence to the fact that he did have a dissociated state. We went through with this interview and it really was not a totally satisfactory interview as a matter of fact.

Q What is the procedure in this type examination?

A Well, the procedure is to, you know, of course have



someone to lie down and then you inject the barbiturate intervenously into the vein in the arm and do it slowly and as you inject it ask the person to count or talk, or do something so that you can begin to determine when the drug is affecting them, when they are beginning to be influenced by it, and at that point when they cannot repeat numbers serially or when they can't go on totally logically with answers and begin to sort of wander off you know that you have reached the proper level of sedation and you are then ready to proceed with the interview itself. I gave Mr. Godfrey all of the Amytal, I gave him four grains of Amytal which under the circumstances I felt was all that was safe from a medical point of view and though he was influenced some by the drug and did skip a few numbers he counted and his speech was slurred, and he obviously was affected by it. He was not as much affected by it as I would have thought . . . or as I would have liked for him to have been to consider the interview to be, you know, more reliable.

Q Did you nevertheless proceed with some interview?

A Yes. I was there and he was under the influence of some of it and so while it wasn't as good as I thought it should be I thought we'd go ahead with it and I did proceed, and I questioned him for approximately an hour. Well, of course, as the hour progressed along he was coming out from under the influence of the drug but initially he was influenced by it to a considerable degree and was some still when it was over, but I questioned him for an hour and he still could not remember anything.

Q To the extent that the procedure is valid what did that indicate to you as a medical psychiatrist?

A Well, the basis for the Amytal interview, or the idea behind it is, that a person under the influence of Amytal will tell what he knows and can recount things, or recall things, that he can't remember, and I guess to the extent that a person tends to relate things that he consciously would not. You would consider the interview positive and corroborating the fact, you know, that he didn't remember it. He really did not remember it.

Q Was he able to answer questions while he was under the influence. . .

A . . . Yes. Oh, yes.

Q In your opinion, to the extent this test was useful, do you have an opinion as to whether or not it substantiates his conscious answers to your questions?

A It was certainly consistent with the conscious answers to the questions. He answered . . . he gave the same answers under the influence of the drug that he had given when he hadn't had no drugs at all.

Q Now, this type procedure is it a normal or usual or unusual type supplementary procedure for psychiatric assessment?

A Well, it's unusual in the sense that most people don't have it. It is not unusual in the sense that whenever you're in a difficult situation and you need to try to get someone to recall some information that it's used very often. But you, you know, most psychiatrists are not in this kind of situation with most patients and so in that sense it becomes somewhat unusual but it's not uncommonly used in this type circumstance.

Q What is . . . if you could just briefly relate to us the history of this type sodium . . . Sodium. . .

A . . . Penothal or Amytal.

Q Has it been so used in the past?

A Well, it was started back in World War II when soldiers who were in combat had suffered. . .

MR. PERREN: . . . Your Honor, I object to this line of testimony on the grounds that it would necessarily be based on hearsay. I have no objection to the doctor testifying about his experience in the use of Sodium Penothal but Hitler and all those folks I object to.

A This is a. . .

MR. HOLMES: . . . Your Honor, I. . .

THE COURT: . . . Just a minute.

MR. HOLMES: I don't think this. . .

THE COURT: . . . If you'll let me Mr. Holmes I'll try to rule with you. I'll allow the doctor not only to testify concerning his experience but reliable literature or research concerning the drug, but he would need to testify wherein he received that knowledge before he does relate that to the jury.

Q In your training in psychiatry all these years doctor have you had occasion to study, read about, and personally experience this type procedure with Pentththal and Amytal?

A Yes.

Q Are you aware from your reading and training of somewhat of the history of its use?

A Yes.

Q What could you relate to us concerning that history?

A Well, in the course of training with relation to the treatment of certain conditions . . . well, dissociated states, I learned that back during World War II Dr. Carl Minniger and some others got the idea that if a person could be influenced to recall the traumatic instance that caused them to lose their memory, the thing that had happened to them on the battle field, that they might relive the experience and through reliving it be able to, you know, be well and be better. So they got the idea of inducing a sort of hypnotic state, a state similar to hypnosis, which is another state people can often times remember things that they can't consciously, but they got the idea of trying to use Pentothal, they had used at that time, so they came up with the original Pentothal interview in which people, these veterans or soldiers, would be given the Amytal or Pentothal and then would be led through the war time experience that they had had in an effort to help them relive it and re-experience it with the hope and with the idea of by reliving the experience, getting rid of all the emotion that was pent up inside that caused them to be sick. That was the original idea that this became to be known as sort of a truth serum where these people would tell things that they could not or would not tell when they were normal and conscious.

Q Now, to the extent that the defendant was under the influence do you have an opinion as to whether or not what he related to you while under this drug is to be given, in your opinion, any degree of reliability?

A Well, I think that I feel that he did tell me the truth. I don't feel that just simply because of the interview. The interview tended to corroborate everything that he had told me previously in, you know, reliving the experience that I had had with him down through the years. He has been consistently pretty open and pretty truthful, has, you know, been pretty much up front with what's happened and how it's happened with the exception of the differences in the accounts of how much he drank and the extent to which he was violent, though he would often times, you know, he would say quite readily that he was violent and that any was too much but there was often times some discrepancy with regard to how much of it there was. Never a discrepancy as to the fact but just to the degree with which it had occurred. So knowing that he had been consistent and truthful down through the years I'm sure had an influence in my thinking with regard to

the truthfulness of his answers to me at this time.

Q Now, while a person is what you've described as a dissociate state that this . . . in your opinion that this defendant was in on the night of September 20th, was he able after entering upon this state to exercise conscious control over his actions?

A No. No, he was not.

Q Is that a classic characteristic of this type state in its severe form?

A Yes. And I would say that the events he described to me and that you have described to me are really classical sorts of events and you could go to any number of textbooks and pick it up and read about a dissociative state and in many instances read almost word for word what he's talking about, what's happening.

\* \* \* \* \*

## TESTIMONY OF ROBERT F. GODFREY

### DIRECT EXAMINATION

BY—MR. HOLMES

WITNESS—MR. ROBERT F. GODFREY, duly sworn.

Q State your name please.

A Robert Franklin Godfrey.

Q Mr. Godfrey, are you a resident of Polk County?

A Route 1, Cedartown, Polk County.

Q Do you presently reside in the Polk County jail?

A Yes sir, for the last five and a half months.

Q Mr. Godfrey, how long were you married?

A Almost twenty eight years.

Q When did you get married?

A The 14th of January 1950.

Q Where have you been employed since that time?

A With the State Health Department, used to be Battey State Hospital, now Northwest Georgia Regional Hospital, Department of Human Resources, for a little over twenty five years, broken service.

Q Have you been employed or held other jobs?

A Yes, I have. I took a position with an insurance company at one time back in the '50's, and I worked with a chemical company in the lab back in 1970 for a short period of time.



Q Have you been at any time confined the the mental hospital in Milledgeville?

A Yes, I have. Once in 1950 and again in '66 and I was transferred from Milledgeville to Murfreesboro VA Hospital in Murfreesboro, Tennessee. I was in Milledgeville in 1971, I believe it was.

Q What caused you to be committed to these institutions?

A Well, it was my drinking. My wife had me committed. Took a warrant for me and had me put in jail for my drinking. She didn't like what drinking I did so she put me in jail and the only alternative I had was to go to Milledgeville, or thereabout. I was committed.

Q How long did you stay down there?

A Well, the first time I stayed approximately four weeks, I would say. I can't remember exactly the amount of time, and they discharged me. And the second time when I went back I stayed there approximately four or five weeks and then I was transferred to Murfreesboro Hospital in Tennessee, Federal VA Hospital, and I stayed there a month and a half or two months, something like that. I'm not sure of the amount of time specifically.

Q Each time that you were released did you go back home?

A Yes sir.

Q Did you go back with your wife?

A Yes sir.

Q Did you ever, because of these commitments, want to separate or divorce your wife?

A No sir, not on my behalf.

Q What type of work did you do at the hospital?

A I'm a surgical technician, or classified as a male nurse. I've worked in the operating room, intensive care units, A.C.U. units, CCC units, in the emergency medical treatment and the traumatic medical at Floyd Hospital emergency room. I have worked there over a period of years, two jobs.

Q Now, in previous testimony there's been mention of an argument with your wife on or about September the 5th. Would you tell us about that?

A Yeah. I'll tell you what I can remember of it. We did have an argument on the 5th of September, Labor Day, I was at home and I was drinking some and we got into an argument . . . not into an argument. We were talking about . . . discussing selling the place to my nephew, and

this and that, and we got into a rather, I guess you'd say a heated argument about the situation, it went on to the point that she got up and left later, or we went into the bedroom and I talked to her a while and I was out and then she left after this. This is when she left.

Q Did you make any threats, or do you recall making any threats?

A I do not recall making no threats. I did tell her what I would do, we'd sell the place and divide the property but I would not give it all to her, not money wise. I told her she could have the home if she wanted to live there and I'd just leave and give her everything, something like that.

Q When was this now?

A On the 5th of September.

Q You don't remember threatening her with a knife?

A No sir.

Q How much had you had to drink?

A I won't be specific but I'd say four or five maybe, Country Club, cans of beer, king size.

Q After that did your wife leave you?

A She left and I did not . . . not to come back home any more. Not to my knowing. She did go in the house while I was gone I understand, because she had a key to go in anytime she wanted to, but now the door was unlocked for that matter.

Q Well, was anyone encouraging her to leave?

A Well, her mother, yes. I won't say encouraging her but she made remarks to the effect that she should, or that if it was her she would.

Q Had she ever, to your knowledge, become involved in yours and your wife's marriage?

A Yes sir.

Q In what respect?

A Well, she . . . I guess I should say in an argumentative way, more or less telling my wife what she should do or shouldn't do, and I think my wife did adhere to some of these things at times too. I'm quite sure she did.

Q After the 5th of September did you see your wife for any length of time?

A I saw her two different periods of time to talk personally with her. She was sitting in her car both times. She come up in her car, not to the house, but it happened to be at the mail box. Then one day she turned off of the main road by Mr. Benefield's home and I talked to her for a few minutes. Two different times personally. No, I'll say



three times because I had her car repaired and I brought her car to her. I had a water pump put on it and carried it to her.

Q Did you make an attempt to reconcile with your wife?

A Not at those particular times I did not. I asked . . . well, I did. I asked her the question if, in the words, "are you ready to come back home", or something, and she said "no" so I didn't go any further into it.

Q Did you have any conversation with her later other than over the telephone?

A Nothing except the one on the telephone.

Q On the 20th day of September what did you do, starting in the morning of that day?

A I got up at the usual time about five or five fifteen, shaved, brushed my teeth, and went to work. I fixed some breakfast for myself. I ate a light breakfast and I went to work at about six fifteen. It was about six fifteen when I left home. I started in to duty about a quarter till seven. We had to sign in and sign out. And I Worked the whole day on the 19th and the 20th.

Q And how long were you there on duty?

A Eight hours.

Q When you left the hospital what did you do?

A I left at approximately three thirty and getting through traffic in Rome I was about . . . I didn't pinpoint the time, I'd say four or four fifteen or thereabouts when I got home.

Q Have you had any trouble in the past with your physical health?

A Well, I have hypertension and diabetes. I've had hypertension for eight or nine years and diabetes for about four. I've known of it for about four years.

Q What range is your blood pressure in when it's unregulated?

A Well, it goes very high. It's nothing for it to be 200/120 to 140. If I can keep mine at 150/100 I'm real fortunate, but this is hard to do for me in my case. I'm under medication.

Q Have you had occasions in the past where you were unable to go to work because of this?

A Yes sir.

Q Can you tell us with what frequency?

A Well, I have got up some mornings, get up as usual . . . try to get up . . . would get up and I would be . . . my

equilibrium would be so shot that I had no balance, I couldn't focus . . . well, I just couldn't focus on anything as far as eyesight wise, and I would call the hospital and not report in. This has been sometime the medications too along with numbness, I guess.

Q What about the diabetes? What kind of treatment has been attempted for that?

A Well, Dr. Smith, at first he said "well, you're borderline", but then again some short time later he did a fasting blood sugar, which is a procedure to check for diabetes or anything else, and then he put me on insulin, 20 units to begin with and then he raised it to 30 units, and I had been taking it for a few weeks and I had a severe reaction from it and I stayed off of it for about three days and I started again and I had a severe reaction a second time. So he told me to stay off of it, to leave it alone, and then he put me on a diet, which I was really already on my own self, but he put me on a 2500 calorie diet that has since been followed.

Q When were these attempts to use insulin?

A Back in the spring of last year, spring or early summer, I'm not specific.

Q Have you had any problems that you're aware of with blackout spells?

A I have, yes sir.

Q Would you describe them for us?

A Well, at times when I . . . I'll not completely pass out but I've had the point to where I have had to sit down and things just black out to me as far as having knowledge or anything. I don't mean unconscious completely but just having knowledge of what was going on around me.

Q How . . . with what kind of frequency have you experienced this?

A Well, I've had no particular sequence it followed. I have been at work, I have been at home, I've been outside working in the hot sun or something like this, and days I have been just sitting in the house doing nothing but maybe reading or something like this for a few times. It don't happen real often. It's something that's started in the last two or three years to the point that I really became concerned and was noticing it, but I still think maybe it was the medication or hypertension is what sometimes does it. I don't know. I assume that's what it is.

Q While you were at work did you get a message of any phone call? I'm speaking of on the 20th of September?

A Yes sir, I did.

Q What was that?

A My mother-in-law called me. She asked me was I going to be home that afternoon and I said "yeah, I'll be at home the usual time", approximately the usual time. She said my wife wanted to talk to me, phone wise not personal wise. I told her yes I'd be at home.

Q After you left the hospital what did you do?

A When I left the hospital?

Q Yes sir.

A I then came through the city of Rome and came on home. I got home about . . . between . . . it was four or four fifteen, somewhere around there. I didn't pinpoint the time because I didn't pay any particular attention to it.

Q What did you do after that?

A My father was there, he came up in the yard . . . I was still in uniform and he came up in the yard for the purpose . . . we had planned to go dove hunting, or was going . . . we had planned to go dove hunting that week sometime and he happened to come by out there that afternoon and we were talking and I asked him to go in the house and he said no, he wouldn't, he says, "do you still want to go dove hunting" and I said "no, I don't think so today, I'm tired, let's wait until Saturday, we'll go Saturday", the following Saturday, and he says "O.K." We must have talked, I guess . . . I really . . . I don't know about the time, twenty, thirty, forty five minutes or maybe more or maybe less, then he left and I assume that he went back home or over to Bill's, he usually stopped at my brother's house over on Collard Valley Road there, about a mile from my house. Then I went on in the house. I asked him again before he left though to come on in the house I was going to fix me something to eat, a lunch, he said no he'd go on, so then I went in the house and changed clothes. I fixed me some lunch and then I noticed . . . I fixed my own lunch a lot of times and carried it with me and I noticed I needed some odds and ends of meat and milk and bread so I . . . I don't know, it must have been about five, I guess, again I didn't pinpoint the time, looking at it, I went back to town. I came out of Collard Valley Road and went out by the State Trooper barracks to the fruit market down here and picked up a loaf of bread, a half gallon of milk, and some packages of meat, lunch meat, and I returned back home. I must have been over there fifteen or twenty minutes. I got back to . . . right in front of my daughter's

house and my son-in-law flagged me down, stopped me, he said I want to show you a snake I killed, so I looked down in the ditch . . . he killed it in the house, it was a king snake or chicken snake, harmless. So then I went on up to the house. I think I spoke to my grandson and my daughter, then I went on up to the house and went back in the house, I don't remember how long I had been there and my wife called the first time and we talked a while on the phone.

Q What was the nature of that conversation?

A Well, my purpose was for reconciliation, going back together, because I did not want to break up our marriage, you know, from my standpoint. And the property, we mentioned the property settlement. And I went over that again with her, I told her . . . I said, you're asking for a hundred percent or all of it and I said I don't think that's fair. I said I think part of it is yours as much as mine but not all of it. I said I'm willing to sell the place and give you half the proceeds after our debts are paid off, or give you the home and everything that's in it and I'll just take my car and myself and I'll go and not contest it if that's the way you've got to have it, but I said I don't want it but I said I will not give you all the money that comes out of it if we sell it. She says, well, I don't want the home it's too big to look after, too much lawn and too much . . . I don't know, two or three different things she said, but she just didn't want it. She didn't want to spend that much time with it because it was a big home, a big problem to keep up. And so she said well . . . I said, well I still am not so concerned with the finance part of it I'd give all of that away before I'd really let our marriage be broke up if that will take it, she says no, it won't. I don't think there's no need talking further on that so we didn't talk no more. She said, "I'll call you back later", and so she did.

Q O.K. How did you feel about the prospect of your marriage being ended?

A Well, I felt about as low as anyone can feel I guess, about as low as I ever felt in my life about anything. I felt a loss . . . a complete loss as far as my own personal self was concerned.

Q Then did you speak with her on the telephone the second time?

A Yes, I did. In between that I was in the home. I think I went outside once or twice, out in the sunshine, and then I went back in the house and got a book to read



because I . . . I couldn't get in the book . . . couldn't get the interest in the book because of problems I had, so the phone rang later on . . . this must have been . . . I don't know, seven, seven fifteen or seven thirty. I wouldn't try to pinpoint the time because as I said I did not look at the time. I wasn't thinking about time periods. She called again and we talked quite a while approximately about the same thing, and it got . . . I guess you could say it kinda got heated at a certain point. I'm not sure you would classify it as a heated argument then, there wasn't no swearing, no cursing or anything like that but it was a heated argument. We could not come to no agreement on that one or nothing. I was opposed to her and she would not come to no agreement and the things she wanted I wouldn't come to an agreement on everything she said, although I did tell her that if it meant it rather than break up our marriage I'd give her everything I had, both automobiles, our home and everything that was in it but she said no, that's not what I want. Then she went on to say . . . said, "Mother has said the same thing", that she shouldn't do it that this should be the end of it, that she said go ahead and divorce, of course the divorce, I had the papers and had had them for a week or ten days or more and the case was supposed to come up in court the 22nd, the 22nd of September, and she was asking for a hundred percent settlement in everything.

Q And what was said concerning that during that phone conversation?

A Well, she said that she wanted everything just like the papers stated, she wanted . . . this was one of the things that I told her I would agree with on that, about her wanting a divorce, but I did stipulate at one time, I said, "well, if that's what you want and there's no other alternative", I said, "I won't contest it", but I said "I do not want a divorce and I did not want a divorce."

Q O.K. What did she say?

A She said "well, I'm still going to let things go as they are to the 22nd", she says "we'll settle that in court". I said "well, if that's the way you feel about it I'm going to have to get a lawyer myself", which I did not. I didn't have one at that time, but I said, "I'm going to have to contest it, the property value . . . the part of the property, you're wanting a hundred percent of the whole thing and I'm going to contest that with a lawyer if I have to", and she says "well, I don't see any further need of us talking

and arguing because you're not going to listen to me and I'm not going to listen to you so we'll just forget it at that", and she hung up on me. And that's when I hung the phone up. I remember hanging the phone up. There was a phone in the kitchen on the kitchen wall, a black phone, I remember hanging it up and . . . well, I felt let down or distraught at that particular time and things just went out, that's the last thing I remember, when I came to it was either the first day . . . it was either the 21st or the 22nd, I'm not sure which but I came to in a jail cell here in the Polk County jail, upstairs.

Q Can you remember even now anything?

A Not anything of the events. The first thing that I remember after this my brothers, I believe, and I'll say the sheriff, or one of the men, I'm not sure but I think it was the sheriff came up the next day, or the second day, I'm not sure which it was, and they came to me . . . both of my brothers talked to me and one of them asked me, he says, "do you know what you've done" and so I knew something was wrong. I says, "Well, there's got to be something wrong I'm locked in jail and they don't put you in jail for going to Sunday School," and he says "yes, you've killed your wife and your mother . . . mother-in-law rather".

Q There's not any doubt in your mind that you did shoot them is there?

A No, there's not.

Q Now, when you went to see Dr. Davis the first time, I think on the 24th, the court signed an order and the deputies took you over there, were you forthright and honest in everything you told Dr. Davis?

A Yes sir.

MR. PERREN: Your Honor, I object to that. That's a conclusion and a fact that ultimately must be determined by the jury as the tryor of facts. It invades the province of the jury.

THE COURT: It is somewhat subject to that objection. I believe in view of some of the testimony of the doctor that I'll allow him to answer it.

Q Did you answer all of his questions as best that you could?

A Yes sir, to the best of my ability I did.

Q -When he talked to you did he inform you that there was further testing that might be able to reveal more to your memory.



A Yes sir, he did mention that there was other tests that might help me, or might bring out something in this respect one way or the other, if I was willing to take it and if the court would permit it. I don't remember the exact words of the court or the time for me, but I said "I'm willing to take anything to bring this back. I'd rather. . . I know it happened but in my mind I'd like to have a reality of it", and this is what I don't have.

Q Now, after you left Dr. Davis' office, before you went back the second time, did you have occasion to discuss the further testing with me before you went back to Dr. Davis as to whether or not you should take that test?

A Yes sir, you did.

Q Now, did you understand at the time the nature of the test, that he would put you under sedation?

A Yes sir, I did. I knew that Sodium Amytal was to be used.

Q And were you informed that while you were in that state that you would be questioned thoroughly about all that he had asked you questions about before?

A Yes sir, I did.

Q Did you understand that under that drug you might be able to tell things that you could not recall in a conscious state?

A Yes sir.

Q Did you understand that under that drug the doctor would be able to determine whether or not you were truthful?

A Yes sir.

Q And you did go back over to Atlanta with the deputies pursuant to the court order?

A Yes sir, I did.

Q And subjected yourself to the test?

A Yes sir, that's correct.

Q Did you love your wife?

A Yes sir, I did.

Q Since the 20th of September have you, while you've been in the cell have you tried as best you could to bring back any recollections?

A Many times.

Q Have you been able to recollect anything. . .

A . . . No sir.

Q . . . other than as you have testified here today?

A No sir. I wish to God I could.

MR. HOLMES: Your witness.

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# TESTIMONY OF DR. ROBERT WILDMAN

## DIRECT EXAMINATION

BY—MR. PERREN

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MR. PERREN: No Sir, I. . . Mr. Wildman has got away from my question. I would like to withdraw the question.

THE COURT: All right.

MR. PERREN: So much of his answer thus far has been before the jury and we'll start over.

Q What does the record reveal was the purpose, and the treatment for in the periods of hospitalization in 1957, 1966 and 1971?

A In '57, my understanding of the law at that time is that he was committed by someone else who described what the problems were. I don't believe. . .

Q . . . Well, my question is what purpose was he treated. . . for what particular thing was he treated at that time?

A I am not certain that, after reviewing the '57 records, that Mr. Godfrey was really complaining of any problems at that time.

Q Well, the question of course. . . can you tell us whether or not it was from a mental disorder or an alcohol problem?

A It was the psychiatrist's judgment in '57 that Mr. Godfrey did not have a serious mental disorder.

MR. HOLMES: Your Honor, I hate to keep interrupting Mr. Wildman but it seems to me he's getting into testifying for other parties.

MR. PERREN: I don't. . . I'll withdraw the question.

THE COURT: I'll let that be stricken.

Q Well, my question is simply this, doctor, what treatment was given him at that time and to what sort of problem did it relate, mental disorder or alcoholism?

A I believe the best answer to that would be a combination of the two.

Q And what was the primary thing?

A I don't believe that any definite decision on that was made.

Q All right. Now, in 1966 what was the purpose of his being in the hospital and what was he treated for there at the hospital?

A Well, now in '66 we have a definite diagnosis that was agreed upon, and that was depressive reaction.

Q And was that related to the use of alcohol?

A Yes, there were some alcohol related problems that were dealt with at that time.

Q Now, what is a depressive reaction?

A That is a response to some type of loss or stress in the environment that is characterized by persons feeling down and often people use the expression blue, lose interest in things, become dejected.

Q And then in the period in 1971 what problems was he treated for?

A That was again related to depression.

Q And was that diagnosed as depressive reaction?

A I think the term at the time was chronic depressive reaction.

Q That means he was depressed a lot?

A I believe that would be a correct way to put that.

Q Is there any indication, or was there any indication, in the records that you reviewed of any psychosis or insanity at any time in the past?

A None whatever to the best of my knowledge and recollection.

Q All right. Now, of course at the time you made your tests and examination were you aware of the fact that he was alleged to have killed both his wife and his mother-in-law by blowing their heads off with a shotgun?

A We were.

Q Did you have any interview with him concerning this episode in his life?

A Oh yes, we asked Mr. Godfrey about his mental status in general and then about the alleged offenses in particular. This is standard procedure for us.

Q Now, did you . . . what did he relate to you'all with regard to this particular action of his?

A He related to us a telephone conversation on the day that the women allegedly were killed in which his wife conveyed to him her feeling that their marriage could not be reconciled and that she was in fact going to go ahead and divorce him. He related hanging the phone up at this point and he related waking up in jail and being told by the individuals in jail what had happened, that he had in fact shot the two women.

## TESTIMONY OF DR. CARL L. SMITH

### DIRECT EXAMINATION

BY—MR. PERREN

WITNESS—DR. CARL L. SMITH, duly sworn.

Q Would you state your name please sir?

A I'm Dr. C. L. Smith.

Q What is your profession or occupation at the present time Dr. Smith?

A I'm employed by the Department of Human Resources, Forensic Services Center at Milledgeville State Hospital.

Q How long have you been employed by the State in the Forensic section at Milledgeville State Hospital?

A Since 1973. Five years.

Q What is your educational background Dr. Smith?

A Emory University, Medical College of Georgia, interned at Crawford Long and Grady Hospital in Atlanta, four years of private practice, general practice in Grady County, Georgia, in 1956 began a psychiatric residency at the Talmadge Hospital in Augusta which covered a period of five years, and then came to Milledgeville State Hospital in 1961, was in charge of the veteran's unit from 1961 until 1973. From '73 to '78 has been in the forensic services.

Q Now, when did you earn your medical doctor's degree?

A In 1951 at the Medical College of Georgia. Licensed to practice medicine, surgery and psychiatry in the State of Georgia. License number 6478.

Q And when were you licensed to practice?

A In 1951.

Q After having earned your M.D. degree did you have a residency in psychiatry at some hospital?

A At the Talmadge Hospital . . . Eugene Talmadge Memorial Hospital in Augusta, that plus work at the VA Hospital, Forrest Hills Division, VA Hospital, Glenwood Division, University Hospital plus the Talmadge Hospital, and that was three years residency and two years of required hospital psychiatric practice.

Q Now, after your college and residencies during your general practice what was the nature of the practice that you followed Dr. Smith?

A In Grady County?



Q Yes sir.

A Well, I delivered eleven hundred (1100) babies down there in four years, and did general medicine and surgery, orthopedics, pediatrics, all of it because the physicians that were in that particular county and area we were all that were there and we had to take care of the people in that area. We sent some to Thomasville, a few to Tallahassee.

Q Since that time have you engaged completely in the practice of psychiatry doctor?

A I have.

Q Now, in your . . . what is the function of the Forensic Services Center at Central State Hospital Dr. Smith?

A Well, people are sent to us from all of the Superior Courts in the State of Georgia for examination, observation, evaluation, and an opinion as to whatever is requested in the court order. Usually on court competency and criminal responsibility.

Q All right sir. Now . . .

A . . . Now, we get about . . . we've got a flow through of about eighty a month through the Forensic Services Center, we also get people from the prison system, Reidsville and Jackson Diagnostic and Colony Farm, Alto Youth Development Center, people that become disturbed and we get them for treatment and then return them to the prison system.

Q Now, in your capacity as a psychiatrist at the Forensic Services Center there at Central State Hospital have you had an occasion within the last month to see, examine, interview, and evaluate the defendant Robert Franklin Godfrey?

A I have.

Q Prior to that time that you saw him within the last month have you ever seen him before?

A Yes.

Q When was that Dr. Smith?

A I can document that in the records, in 1966 in the Veteran's unit, and also in 1971 in the Veteran's unit, and I made a note on each occasion.

Q Now, at the time you saw him in 1966 in the Veteran's unit there at Central State Hospital what treatment regime was initiated for him?

A In 1966?

Q Yes sir.

A I would have to look. I don't recall exactly the

treatment. Well, you might say medication and treatment for alcoholism and depression with different medications plus perhaps some therapy from the nursing staff or attendant staff and that type thing. I didn't . . .

Q . . . At that time, as you recall from having reviewed your records doctor, can you tell us whether or not there was any indication of his suffering from any psychosis?

A None that I could document or find.

Q Then what would be the primary reason for him having been hospitalized at that time?

A Well, at that time he had been drinking excessively and was depressed, and according to information furnished by relatives had been violent and irresponsible, had been acting out on anger, and resolving his depression in part by drinking.

Q By drinking?

A Yes.

Q Now, in 1971 what treatment, if any, was he given there at the hospital?

A Treatment for the same situation. He was transferred from there to the VA Hospital in Murfreesboro, Tennessee.

Q Was that in '71 or '66?

A In '71, I think it was. Either in '71 or '66, one of the two.

Q And what is the nature of the treatment that is given a person who abuses alcohol there at the hospital?

A Well, ordinarily insofar as the physicians and nursing staff is concerned it's kind of a superficial type of treatment with medication and activities. Insofar as in the individual therapy is concerned that very seldom happens in an alcoholic, like joining AA groups and that type of thing, but insofar as individual therapy is concerned in my recollection we just didn't do individual therapy on alcoholics. It was more of a drying out process, and then a stabilizing and leveling off.

Q All right. On either of these occasions in '66 or '71 when you saw him was there anything about any treatment or interviews that you had with him that would indicate the existence of any psychosis?

A No, nothing in the record in '66 or '71 that indicates any sort of psychosis or insanity, using those terms interchangeably as having the same meaning.

Q Now, when he was at the hospital the last time do



you recall when he first came there?

A Yes, on February 15th, and he was there until February 23, a period of seven days.

Q During that period of time did you make examinations, have interviews and tests of his mental capacity?

A Twice.

Q And what tests, or what was done in an effort to determine his mental condition and capacity Dr. Smith?

A Well, on admission of course he had a physical examination and an admission note and then routine laboratory procedures were ordered, an electroencephalogram or brain wave test was ordered, skull x-ray requested, complete psychological testing was requested and he was put on some medication for his tension anxiety and/or depression.

Q Now, what is the function of the electroencephalogram?

A Well, that's an electrical instrument or device to measure brain wave activity and primarily it is to try and determine if there is any organic brain damage, or if there is not any organic brain damage.

Q What was the result . . .

A . . . In this instance Mr. Godfrey had a normal electroencephalogram.

Q Which would indicate what?

A Which would indicate no organic brain damage insofar as the EEG is concerned.

Q What would be the purpose of the skull x-rays, the skull series?

A To try and see if there was any indication of a space occupying lesion, any indication of dilation of ventricles, any indication of post skull fracture, and in this instance the skull x-ray was negative except for sinusitis, I think, in the right maxillary sinus. The tables looked good, the inner and outer tables of the skull, the sella turcica where the pituitary gland sits that was normal, and there just wasn't any pathology on skull x-ray except perhaps sinusitis.

Q Now, what other examination was had with regard to his physical condition?

A Well, a physical examination was done, blood pressure was checked, past history taken of course, and he did have a hypertension, you might say hypertensive cardiovascular disease, his blood pressure was running up around 190/140, and he was put on a diuretic, Hygroton

and Aldomet, another medication for blood pressure, and on the last reading it was 140/90. It previously had been running around 190/140 or 180/120. And then he was on a diabetic diet which controlled his mild diabetes. Now, I notice back in 1966 that I requested a repeat urinalysis and fasting blood sugar because it was showing a normal blood sugar but a four plus urine sugar so I would imagine this diabetes could be documented that far back.

Q All right . . .

A . . . So then he had a sub total gastrectomy, a history of duodenal ulcer or peptic ulcer, and Mr. Godfrey had a sub total gastrectomy, I forget where he had that, maybe in the VA Hospital or some hospital.

Q Now, a sub total gastrectomy, that was for the treatment of a peptic ulcer?

A That's correct.

Q And removal of the ulcer?

A That's correct.

Q Was any part of his stomach removed at that time?

A On a sub total part of the stomach is removed, and the duodenum . . . part of the duodenum.

Q Now . . .

A . . . The first part of the small intestine.

Q Now, was he found, from a medical standpoint, to have any physical disease or sickness other than the mild diabetes, the high blood pressure or hypertension, the fact that he had had a previous gastrectomy . . .

A . . . That's all except mild obesity, slightly overweight.

Q Now, what test was performed on him doctor from a psychiatric standpoint to determine his mental condition?

A Well, he was seen by the forensic group, I was present, and he was seen by Dr. Wildman and I, I was present, and that covered a period of two hours approximately, and then our information from the attendants, from the psychiatric nurse, observation on the ward, and during . . . when he came in and during his seven days he manifested no symptoms of any sort of abnormal behavior, abnormal thinking, or abnormality of effect, and to have a psychosis you've got to have all three of those.

Q Then based upon these observations and examinations what was your opinion at the time you saw him as to his capacity to understand and relate to reality?

A During his entire seven days that he was in the forensic center he was reality based.

Q Doctor, were you made aware, as a psychiatrist, of the fact that he was charged with two counts of murder and an aggravated assault, including the death of his wife, the death of his mother-in-law and an assault upon his eleven year old daughter?

A Yes, this was in the court order.

Q And . . .

A . . . This was at the top of the court order. I was aware of it anyway.

Q And at that time were you made aware of officers investigation reports and certain statements relating to the incident contributed to the defendant himself?

A I had that information.

Q Now doctor, based upon a . . . well, let me ask you this hypothetical question. Assuming these facts were true, that on the day in question, of the occurrence itself, a man arose at the usual hour in the morning, attended to himself, shaved, dressed, made his breakfast and went to work, worked at Northwest Regional Hospital all during the day where he discussed a marital difficulty and separation from his wife that was existent at that time with a fellow employee, made a statement to that employee that it would all be over by the 21st, which would be the next day, left his work at three thirty that afternoon and came home, performed certain activities around the house, discussed the marital situation and property division and settlement with his wife over the telephone on two occasions, went to the store to obtain small items of groceries that he needed such as luncheon meat, bread, milk, and apples, stopped by his son-in-law's house at the request of his son-in-law or upon being hailed by his son-in-law to examine a snake his son-in-law had killed, and could relate the route that he took to the store, from the store to a stop there, what kind of snake that was, whether it was a poisonous or non poisonous snake, went out into a grove there at home and took a ladder from against a tree so that some of the kids would not be hurt by climbing around on the ladder, watched television or at least listened to some news, of course, on television, looked at an encyclopedia, then at the time of the last conversation with his wife became convinced that his wife was not going to reconcile with him, that he was not going to be able to settle the property dispute with her, he told her that he's just have to get him a lawyer, and got into an argument that was heated enough that they were getting no where, where

she hung up the telephone, and at that time he realizes that there is to be no reconciliation that they're going to court in connection with their domestic difficulties, then afterward goes to a closet where he has three different guns . . . four different guns at least, three of which were shotguns, a 410 gauge, a 16 gauge, both single shots, a 20 gauge Magnum with a 22 Magnum rifle barrel on top of that 20 gauge, where there were a number of different size shells, 410's, 12's, 16's, 20's, and gets a gun, the 20 gauge Magnum, gets shells for those guns, which he says is never loaded while it's on the shelf in that closet, goes to his mother-in-law's house where his estranged wife is staying a hundred and twenty five yards away, in the darkness goes to a garage or carport behind that trailer down there where there is a jalousie window open, aims that gun through the screen to a point where his wife, his eleven year old child, and his mother-in-law are seated playing Rook, and fires that gun into his wife's forehead blowing her head off, or blowing her head into mush in the back, and then when she falls over on the table there . . . at the table, the little girl runs and his mother-in-law jumps up and begins to scream, she runs out the door and he hits her on the head . . . the little girl on the head with the barrel of the gun while she is attempting to get away from the trailer to go to her sister's house some thirty or fifty yards away, then ejects the shell from the chamber at some time then goes into the trailer after reloading the gun with another 20 gauge shell, fires again into the head of the mother-in-law at a range so close the pellets as they tear into and out of her head blow a part of her skull six feet away from where her body falls and her brain out into the floor a foot or so from the top of her head. Then picks up the telephone, or takes the phone off the wall in that trailer and dials the number of the sheriff's office in Cedartown and talks with the man at the desk and gives him his name, he's Robert Godfrey, tells him that he has just blown his wife's and mother-in-law's head off with a shotgun, and when asked where it was he told that it was at the residence of Mrs. Chessie Wilkerson, his mother-in-law's, out on Collard Valley Road seven and a half miles from Cedartown on the right hand side of the road going out, when asked what the telephone number was he correctly related the telephone number to the officer at the desk. Then takes the shotgun which has again been unloaded and places it in an apple tree out there, goes and



sits down in a lawn chair. The officers arrive, a uniformed officer . . . two uniformed officers that he recognizes and knows, he tells . . . makes the statement "there's no need to go up there, they're both dead, I killed them". Then makes the statement "I'll show you where the gun is", carries the officer to see where the gun was placed in the forks of a tree, apple tree, then when seated in the patrol car after having been taken into custody the sheriff arrives, he recognizes him, calls him by his first name, says "I understand that you called the office and wanted me to come out here, is there something I can do for you", he makes the statement "no, there isn't anything now it's all over, it's all done". Then later when brought to the police headquarters out here in a lounge area where there is a coffee maker and a table where he asks the officer, another officer by the name of McLendon who he knows personally, for a cup of coffee and is given a cup of coffee makes the statement "Mac, I've done a hideous crime, I've been thinking about it for eight years. I would do it again". Now, assume those things occurred doctor, tell us whether or not from your examination of the patient and your interviews those would be the actions of a man who knew the difference between right and wrong.

A In my opinion he would know the difference between right and wrong.

Q Would that contact with the reality of the situation at that time indicate whether or not he was able to . . . if he was able to distinguish between right and wrong, whether or not he was able to adhere to the right?

A He could adhere to the right.

Q And was there anything in the history that you have had or the past observations that you have made, or the examinations made in February this year, February 15th to the 23rd, to indicate to the contrary at the time of this incident?

A He was functioning at . . . in my opinion at a conscious level, reality based.

Q And these activities which I have mentioned to you doctor are those activities which could, in your opinion as a psychiatrist, and having examined this man activities that could be done unconsciously from a mental view point?

A No.

Q Would you tell us whether or not in your opinion these deliberate actions would require some conscious con-

tact with reality?

A They certainly would. Certainly remembering the telephone number, giving directions to the sheriff's department, in fact it's just that this was all on a conscious level it wasn't on any unconscious or on the level of any sort of mental illness insofar as I can determine.

Q Would there be any reservations whatsoever in your mind from a professional standpoint as a psychiatrist as to whether or not he could distinguish between right and wrong at the time these actions had taken place?

A There would be no reservation whatsoever.

Q Would there be any reservations whatsoever as to whether or not at the time these actions were taking place he was in a condition where he could not for any reason adhere to and follow that which was morally right had he decided to?

A He could have.

MR. PERREN: I have no further questions.

### CROSS EXAMINATION

BY—MR. HOLMES

WITNESS—DR. CARL L. SMITH

Q Doctor, you mentioned that when the defendant came down to the hospital down there in Milledgeville that you performed some tests on him. Did you conduct these yourself?

A Well, no. The tests were requested by the admitting physician, which is routine or usual, and then those tests are done and we see the results and then we use them in our evaluation.

Q You're talking about the physical tests?

A That's correct.

Q Now, there were some further tests run and examination or further interviews. Tell us what you did in that respect?

A Well, this was with Dr. Wildman on one occasion and with the forensic group on the other occasion.

### OPENING ARGUMENT TO THE JURY

BY—MR. PERREN

Your Honor, may it please the court, the indictment and special presentment in this case is drawn under the provisions of Code Section 26-1101 of the criminal code which



defines the offense of murder, and that provides in sub section (A), a person commits murder when he unlawfully and with malice aforethought, either expressed or implied, causes the death of another human being. Expressed malice is that deliberate intention unlawfully to take away the life of a fellow creature which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.

Sub Section (B) provides, a person also commits the crime of murder when in the commission of a felony he causes the death of another human being irrespective of malice.

Now, the special presentment in this case is drawn in such a way as to include both the malice murder and the felony murder as defined by sub section (A) and (B) because it is alleged that he did on the day in question, that is Robert Franklin Godfrey on the 20th day of September, 1977, with malice aforethought and while making an aggravated assault upon the person of Mildred Godfrey with a deadly weapon, the same being a shotgun, caused the death of said Mildred Godfrey by shooting her with said shotgun contrary to the laws of the State, the good order, peace, and dignity thereof.

Now, as alleged the felony that we contend and allege that he was committing was that of aggravated assault which is defined by Section 26-1302 of the Criminal Code of this state. That provides "a person commits aggravated assault when he assaults with intent to rob, to rape, or to murder, or with a deadly weapon". Of course it is alleged in this case that he did make an assault with a deadly weapon, the same being a shotgun. Now, a shotgun is recognized under the law and the precedence and the decisions of the Supreme Court in this state as being per se, that is in and of itself, a deadly weapon.

In count three he's charged with an aggravated assault upon his daughter, Tracey Godfrey, which also is defined by Section 26-1302, alleging that that assault was made with a deadly weapon, being a shotgun, with which he struck her on the head with the barrel with the intent to murder her. And on that count the evidence has shown that prior to the time that the little girl was struck on her head with the barrel of the shotgun used in this case that that same gun had been used to shoot Mildred Godfrey in

the head as she sat at the table inside the trailer where her mother lived and where her and her young daughter were playing cards with her mother.

Of course now a crime is defined as a violation of a statute of this state in which there shall be a union or joint operation of acts or omission to act and intention or criminal negligence. The code also provides that the acts of a person of sound mind and discretion are presumed to be the product of a person's will, but the presumption may be rebutted. It also provides in Section 26-604 that a person of sound mind and discretion is presumed to intend the natural and probable consequences of his act, but this presumption may be rebutted. It goes on to provide in Section 26-605 that a person will not be presumed to act with criminal intention but the tryor of facts, that is the jury, may find such intention upon consideration of the words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted. It goes on to give another presumption in Section 26-606 as provided by the law of this state that statutorily every person is presumed to be of sound mind and discretion but the presumption may be rebutted.

Now, in regard to malice and intent there are numerous cases in this state which provide that every homicide is presumed to be malicious until the contrary appears, and this is true regardless, and is the law regardless of the manner used to complete that homicide. As I have already stated the law is that a shotgun is recognized by the law and the presses and courts of this state, and the courts of any other states that I know of in civilization, to be a deadly weapon per se. Now, it's not necessary that malice exist for any period of time. Our courts have held that malice is the deliberate intention to take away the life of a fellow creature. In Crawford versus the State our Supreme Courts have held that malice in law does not mean that the slayer entertain any hatred, ill will, ill feeling, or anything of that character toward the person killed. It means intention to take human life under such circumstances that the law will neither justify, excuse, or mitigate. A man may kill another against whom he entertains no ill will, maybe a stranger to him, yet be guilty of murder. No particular length of time is required, it may be formed in a moment and instantly a mortal blow may be given or a fatal shot fired yet if malice is in the mind of the slayer at the time of the act and moves him to do it it is

sufficient to constitute murder.

Now, these are cases that have to do with malice. Under our law it is not necessary in every case that malice be shown because where a person causes the death of another human being while in the commission of a felony it makes no difference whether there is malice or not. When a person takes a shotgun, a deadly weapon per se, and points it at another person and is within a position where he is then making an assault he has the means to produce death in his hands, that gun is loaded and he makes an assault at that time and then death results from the assault thus made it makes no difference if he had no malice it is still murder irrespective of the existence of malice.

Now, of course the idea has been presented in this case of insanity as a defense to the criminal acts alleged against Robert Franklin Godfrey and overwhelmingly shown by the evidence thus produced. That can be found in Code Section 26-702 which provides that a person shall not be found guilty of a crime if at the time of the act, omission, or negligence constituting the crime such person did not have mental capacity to distinguish between right and wrong in relationship to such act, omission, or negligence. That being the old M'Naughten rule as adopted by the courts of this state many years ago. That is the only excuse for a person being relieved from the crime and responsibility of his act, is at the time of his act he is not able to distinguish the difference between right and wrong. And another feature of the insanity defense, and the only other feature recognized under the law, is that defined in Section 26-703 of the Criminal Code of this state which provides "A person shall not be found guilty of a crime when at the time of the act, omission, or negligence constituting the crime such person because of mental disease, injury, or congenital deficiency acted as he did because of a delusional compulsion as to such act which overmastered his will to resist committing the crime", and in that regard there is a case found in 236 Georgia Supreme Court Reports which has been decided by our Supreme Courts within the last year. It's found at page 378 of volume 236 Supreme Court Reports. It says that the Supreme Courts of this state which provides what the requirements are before the defense of delusional insanity, as I have just stated, is available to a defendant in a case. They said in that case in order for a defense of delusional compulsion to be available in trials of murder there must

be evidence that the defendant was laboring under a delusion, that the act itself, that is the murder, was connected with that delusion and furthermore that if the delusion under which he was then suffering, if true, would justify the act. And of course there is no such thing involved in this case as delusional insanity because he. . . there's no evidence that he was suffering under any delusion, that the delusion was related to the act which he committed, or that the delusion of the existence of facts, if they had been in fact true, would have justified the act.

Now, in regards to criminal responsibility of a person who claims the defense of insanity there is a case that is as near this one as you can make two cases, the case of Rebel versus the State found in the 235th volume of Georgia Supreme Court Reports beginning at page 71. The case was tried. . . or was decided in September 1975, some three years ago. The law enunciated in that case is still applicable in this state today. In this case the very factual situation as existing here except there was only one killing in that case. Rebel killed his wife and when the police got to his home where the killing took place. . .

MR. HOLMES: . . . We would ask that Mr. Perren read from the law Your Honor, on the case law.

MR. PERREN: When the police arrived the appellant surrendered to them and turned over the death weapon, saying, here's the gun, I killed my wife. Then the court said, in reviewing that case, after a conviction, held that from the evidence of premeditation discussed above and evidence at the trial that the appellant had an extremely retentive memory of the events before and after the event coupled with the absence of any evidence of insanity or delusion other than the alleged loss of memory at the time of the offense we cannot say that the evidence demanded a finding of not guilty by reason of insanity. The exact case, exactly like this except for the fact that there was only one person, the man's wife, dead and he could remember nothing about the shooting, or denied any memory of the shooting.

These are principles, Your Honor, that we feel are involved in the case and that the court will instruct the jury upon before they commence their deliberations. With those remarks I would reserve. . . make a concluding summary of the evidence to the jury.

(Mr. Perren concludes his opening argument to the court and jury)

\* \* \* \* \*



## POLK SUPERIOR COURT

CASE NO. 1946  
THE STATE

vs.

ROBERT FRANKLIN GODFREY

## COUNT ONE

We the Jury find the Defendant Not Guilty.  
This March 9, 1978.

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Foreman

We the Jury find the Defendant Not Guilty by reason of  
insanity.  
This March 9, 1978.

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Foreman

We the Jury find the Defendant Guilty.  
This March 9, 1978.

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Mack G. Moore  
Foreman

## COUNT TWO

We the Jury find the Defendant Not Guilty.  
This March 9, 1978.

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Foreman

We the Jury find the Defendant Not Guilty by reason of  
insanity.  
This March 9, 1978.

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Foreman

We the Jury find the Defendant Guilty.  
This March 9, 1978.

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Mack G. Moore  
Foreman

## COUNT THREE

We the Jury find the Defendant Not Guilty.  
This March 9, 1978.

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Foreman

We the Jury find the Defendant Not Guilty by reason of  
insanity.  
This March 9, 1978.

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Foreman

We the Jury find the Defendant Guilty.  
This March 9, 1978.

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Mack G. Moore  
Foreman

We the Jury find the Defendant Guilty of Simple Battery.  
This March 9, 1978.

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Foreman

FILED IN OFFICE  
This 9th day of March 1978  
S.W. GALLOWAY, Clerk



### CLOSING ARGUMENT TO THE JURY

BY—MR. PERREN

Your Honor, may it please the court, the same statutes of this state that defines the offense of murder also provides for punishment. It provides that a person convicted of murder shall be punished by death or by imprisonment for life. Of course that's giving an alternative which must be determined by the jury. However in the case of Perry versus the State, an old case decided in 1897, eighty years ago, our courts recognized the way the statutes today are still written, recognized and stated that the penalty of death was brutal and that a life sentence or life imprisonment was the exception. Of course there have been some changes in our laws since 1897 with respect to this type punishment, punishment in a case such as that now before the court, within the last few years we have seen considerable changes about the law regarding capital punishment including the decisions of the Supreme Court of the United States and in the past three years one from Georgia being the case Furman versus the State wherein the court held that the death penalty was constitutional under the law as it is presently cast in this state.

Of course in order for the death penalty to be inflicted and in order to make the death penalty itself comply with the mandates of the Supreme Court of this country the State of Georgia through its General Assembly passed a statute requiring that before the penalty could be inflicted, that is the penalty of death, that. . . and this is Section 27-2534, one of the criminal procedure codes, (a) the death penalty may be imposed for the offense of aircraft hijacking or treason in any case. (b) In all cases of other offenses for which the death penalty may be authorized the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law, and any of the following statutory aggravating circumstances which may be supported by the evidence. Of course it lists then ten statutory aggravating circumstances, many of them are not involved in this case, in fact there is only one of the aggravating circumstances enumerated by the laws of this state which applies in this case, that is the seventh enumerated under the general statutes which provide, the offense of murder, rape, armed robbery, or kidnapping was outrageously or wan-

tonly violent, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.

Now, of course in this case it is not the contentions of the State that the murder in this case involved torture, or that it involved an aggravated battery in the sense in which it is defined by our criminal code, but we contend, and it is the law in this state, that it's not necessary that all of these things be found by the jury, only that some of these circumstances be found. And we submit to the court that in this case the murder was outrageously wantonly vile, that it was horrible, and inhuman and involved a depravity of mind. If those things be found by the jury then those are the things which authorize and not only under the law since the imprisonment for life is the alternative, but they dictate the imposition of the penalty of death.

Ladies and gentlemen of the jury you have heard remarks I have made to the court regarding the law and of course you will be authorized, and in order to in the process of establishing a punishment which you feel is applicable in this case it is necessary, mandated by the law, that you as jurors find some aggravating circumstance and make it a part of your verdict. The aggravating circumstances, in determining that, you must determine whether or not the killing, or the killings, in this case were outrageously and wantonly vile. And you must determine whether or not they exhibited and manifested depravity of mind, and whether or not they were horrible and inhuman.

Of course you cannot find there was torture. There wasn't any torture. It was sudden. There wasn't any torturing of anyone prior to or after the blast of the gun that took away the life of Mildred Godfrey or the blast of the gun that took away the life of Mrs. Chessie Wilkerson. What do they exhibit to you? Of course they didn't involve any aggravated battery because that was not involved under the law of this state. Of course aggravated battery would be crippling or maiming or disfigurement of a person, like cutting off a leg, putting out an eye, or something of this nature.

But now what do the facts exhibit to you? And they are all of the facts that you will have to consider when you go out there to make a determination. The court is required under the law to give you a charge in writing concerning this which you may use as a guideline, and that aggravated circumstance must be set forth within that written

charge that you'll carry to the jury room with you. Don't worry about torture. There wasn't any. Don't worry about an aggravated battery. But now when you look at the wording of that aggravated circumstance, and you must find it beyond a reasonable doubt, and your foreman will be required to write out a verdict setting forth the aggravating circumstances which you find. You can set out the fact, under the facts and the evidence in this case, that the murder as to each case was outrageously and wantonly vile. You can set out as to each one that they were each horrible and inhuman, and that they exhibited, and the manner in which they were executed exhibited a depravity of mind. Those three things are there as evidence. Beyond any doubt, reasonable or otherwise, when you sit you look again at those photographs, horrible and vile though they seem, and a scene portrayed that you wish your eyes never fell upon, but they tell you something. They tell you something you can't run from, you can't hide from, you cannot escape from, and then when your eyes fall upon them again when you go out there to consider punishment you think about the nonchalance and the lack of concern shown by the defendant when he cast his eyes upon them and didn't care, not one glimmer of feeling or concern or care. At no time a glimmer, even a little light of remorse or concern or care.

You think about the outrageously and wantonly vile manner in which the deaths of Mildred Godfrey and Mrs. Chessie Wilkerson came about as the result of the depravity of mind and the bitterness, even hate, you can see exhibited by the conduct of this man here on trial. You know something, when you think about the vileness and the wantonness and the depravity of mind exhibited by it all can you close your eyes, ladies and gentlemen, and think of a load of number four shot tearing through your forehead and the shots spreading out from this fractured skull and coming through the entire internal section of the brain and just liquefying and blowing the back of the head off. Close your eyes and see if you can feel it. Close your eyes and look at the belch of flame from the barrel of that twenty gauge gun. You know you say you can't see the state of mind or the feeling of man, you can't look into his brain and see it, but you can see the state of mind of man who is bent on killing and taking away lives if you can just see the belch of smoke and flame from the end of that barrel. Do you suppose Mildred Godfrey even got a chance to

see? I hope to God she didn't. I hope she didn't see the face behind the butt of that gun with the barrel pointed toward her and it belched flame and smoke. That's malice in living color.

And then you are going to hear about, oh no, you can't do this, you can't take away the life of a man. Yeah, that's right, that's the law, except by the law itself. You all indicated that you believed in capital punishment. It's a lot easier to believe in it at the drug store having a cup of coffee or out on the street than it is sitting in a jury box, and that's the only place where it really matters. It's easy to disbelieve in it if you're a do-gooder sitting somewhere in some moral palace where you're protected from the ravage of malice, street happenings and such as that, and things that happen like they did here on the 20th day of September. But if you could call back the still tongues and unseal the lips of Mildred Godfrey and Mrs. Chessie Wilkerson and ask them, well, what do you believe, what do you suppose they'd tell you if they could tell you the feelings they had when the pellets from that shotgun blast tore into their heads?

And you're always bombarded with the idea of mercy, mercy. Everybody always at a time when their own life may be demanded of them they always scream "mercy to me", "mercy on me". But now let me ask you something in all candor and sincerity, did Mrs. Mildred Godfrey or Mrs. Chessie Wilkerson either one even have an opportunity to even beg for mercy, or ask for it? And did they receive any mercy? And the person who has shown none deserves no more than he had been shown. . . or than he has shown to someone that he professed love for and could show not the first glimmer of concern over her lying dead on the floor.

Some learned scholar in and a jurist said once if men sow to the wind they cannot expect the courts and juries to interpose and prevent them from reaping the whirlwind. If passion without sufficient provocation is to excuse men from a crime and guilt of murder then is human life cheap indeed, of no more value than a sparrow's. He went on to say that this is an age of Cain and the voices of murdered Abel's come up at every court, every court, crying aloud to the ministers of the law for vengeance. There is no one else that they can cry to. There's no one that Mildred Godfrey can cry to, there's no one that Mrs. Chessie Wilkerson can cry to, you only must hear their voices from the grave crying out that you, me, and the ministers of the



law do something about the wantonly vile and horrible manner in which their lives were snuffed from them. And you know, the only thing that is going to still the cries and make the cries from the grave come to us less frequently is something else that he learned jurist said, and he said "let the stern response go out from the jury box that who so sheds man's blood so shall his blood be shed". That jurist did not think that up himself, that last portion of that came from the book of books, the rule and guide that we should follow with our lives, that we should use in the conduct of our affairs, even sitting on jury's, if we are to have liberty, if we are to have liberty and freedom that you heard about yesterday, it must be encased in the merciless hands of the law. That's the only way. That's the only way.

You as jurors have the responsibility of encasing liberty in the merciless hand of the law the acts of Robert Godfrey in this case. Outrageous and wantonly vile, exhibiting depravity of mind, horribly inhuman, and you should demand, if there be such a thing, or if there is ever going to be such a thing, you should demand of him his life under the law and in accordance with the law. Thank you.

### *CHARGE OF THE COURT*

Ladies and gentlemen of the jury, it is now your duty to return to the jury room and fix the punishment in this case, as to Count One and Count Two.

Code Section 26-1101(c) provides "a person convicted of murder shall be punished by death or by imprisonment for life.

Mitigating circumstances are those which do not constitute a justification or excuse for the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability or blame.

Aggravating circumstances are those which increase the guilt or enormity of the offense or add to its injurious consequences.

In determining your verdict in this case, you shall consider any mitigating circumstances which you find and you may consider any of the following aggravating circumstances which may be supported by the evidence:

(1) That the offense of murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim.

In the event you fail to find an aggravating circumstance or circumstances beyond a reasonable doubt you would fix the punishment at life imprisonment, and even though you find the existence of a statutory aggravating circumstance or circumstances you could recommend a life sentence.

In the event you determine that your verdict will be a recommendation of death, you shall designate in writing the aggravating circumstance or circumstances which you found beyond a reasonable doubt.

CASE No. 1946

POLK SUPERIOR COURT

THE STATE

*vs.*

ROBERT FRANKLIN GODFREY

## COUNT ONE

We, the Jury, fix the punishment of ROBERT FRANKLIN  
GODFREY at Life Imprisonment.

This March\_\_\_\_, 1978.

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Foreman

We, the Jury, fix the punishment of ROBERT FRANKLIN  
GODFREY at Death and designate as the aggravating cir-  
cumstance or circumstances which we find beyond a rea-  
sonable doubt as follows: that the offense of murder was  
outrageously or wantonly vile, horrible and inhuman.

This March 9, 1978.

Mack G. Moore

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Foreman

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FILED IN OFFICE

This 9th day of March 1978  
S.W. GALLOWAY, Clerk

CASE No. 1946

POLK SUPERIOR COURT

THE STATE

*vs.*

ROBERT FRANKLIN GODFREY

## COUNT TWO

We, the Jury, fix the punishment of ROBERT FRANKLIN  
GODFREY at Life Imprisonment.

This March\_\_\_\_, 1978.

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Foreman

We, the Jury, fix the punishment of ROBERT FRANKLIN  
GODFREY at Death and designate as the aggravating cir-  
cumstance or circumstances which we find beyond a rea-  
sonable doubt as follows: that the offense of murder was  
outrageously or wantonly vile, horrible and inhuman.

This March 9, 1978

Mack G. Moore

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Foreman

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FILED IN OFFICE

This 9th day of March, 1978  
S.W. GALLOWAY, Clerk



IN THE SUPERIOR COURT  
FOR THE COUNTY OF POLK,  
STATE OF GEORGIA

CRIMINAL CASE No. 1946

THE STATE

vs.

ROBERT FRANKLIN GODFREY

SENTENCE OF THE COURT

The jury selected, impaneled and sworn to try the above named and stated case having found the defendant, ROBERT FRANKLIN GODFREY guilty of the offense of Murder as alleged in Count One of the Special Presentment and having found the defendant guilty of the offense of Murder as alleged in Count Two thereof, after which the jury was given instructions in writing as to Statutory Aggravating circumstances warranted by the evidence in charge as to punishment; and, the jury having found in their verdict as to punishment as to both Counts one and two that "the offense of murder was outrageously or wantonly vile, horrible and inhuman" and having recommended punishment by death as to Count One and as to Count Two by their verdict on March 9, 1978, it is:

CONSIDERED, ORDERED, AND ADJUDGED that the defendant, ROBERT FRANKLIN GODFREY, be punished as to Count One by death by electrocution on the 14th day of April, 1978, at 11:00 o'clock, A.M., and that the defendant be delivered to the Director of Corrections for electrocution at such penal institution as may be designated by said Director of Corrections, as provided by law in such cases; and it is:

CONSIDERED, ORDERED, AND ADJUDGED FURTHER that the defendant, ROBERT FRANKLIN GODFREY, be punished as to Count Two by death by electrocution on the 14th day of April, 1978, at 11:00 o'clock, A.M., and that the defendant be delivered to the Director of Corrections for electrocution at such penal institution as may be designated by said Director of Corrections, as provided by law in such cases.

It is so ORDERED this 13th day of March, 1978.

DAN WINN  
Judge, Superior Courts  
Tallapoosa Judicial Circuit.

FILED IN OFFICE

This 13th day of March 1978

SANDRA W. GALLOWAY, Clerk

FELONY SENTENCE

The STATE OF GEORGIA vs. ROBERT FRANKLIN GODFREY, Defendant,  
In the Superior Court, Polk County, Georgia.  
Docket Number (s): 1946; Count(s): Three

OFFENSE(S)	DISPOSITION	SENTENCE(S)
1. Murder	March 9, 1978 Verdict of Guilty	<del>XXXXXXXXXXXXXXXXXXXX</del> Death s
2. Murder	Verdict of Guilty	Death s
3. Aggravated Assault	Verdict of Guilty	10 YRS. s

Whereas the Defendant has entered a plea or been convicted of the charges as set forth above, IT IS HEREBY ORDERED that the Defendant be confined at labor for the term (s) specified above, said sentence(s) to be served in the State Penal System in such institution as the Director of Corrections may designate.

IT IS FURTHER PROVIDED that none (years)/(months) of the above sentence(s) may be served on (Probation)/(Suspension), PROVIDED that said Defendant complies fully with the conditions set forth in the Order of (Probation)/(Suspension), said Order to become effective \_\_\_\_\_

IT IS FURTHER ORDERED that this sentence shall apply as to Count Three, the Court having sentenced the defendant to death by electrocution as to Counts One and Two by a separate written sentence this date.

The Defendant, Robert Franklin Godfrey, was represented in this matter by the

Honorable J. Calloway Holmes and Gerri Holmes

Attorney at Law, Polk County.

FILED IN OFFICE

THIS 13th DAY OF March 1978  
Sandra W. Galloway CLERK.

By the Court, March 13, 1978

Dan Winn  
JUDGE PRESIDING

## Report of the Trial Judge

of the

Superior Court of Polk County, GeorgiaThe State vs. Robert Franklin Godfrey  
(A case in which the death penalty was imposed)

## A. Data Concerning the Defendant

1. Name Godfrey, Robert Franklin 2. Date of Birth July 16, 1929  
Last First Middle Mo. Day Year
3. Social Security Number 257 40 8077
4. Sex M [X] 5. Marital Status: Never Married [ ]  
F [ ] Married [ ]  
Divorced [ ]  
Spouse Deceased [X]
6. Children  
(a) Number of children Four (4)  
(b) Ages of children: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22  
(Circle age of each child) 23 24 25 26 27 28
7. Father living: Yes [ ] No [X] If deceased, give date of death Sept. 10, 1978
8. Mother living: Yes [ ] No [X] If deceased, give date of death Aug. 24, 1969
9. Number of children born to parents Three (3)
10. Education--Highest Grade Completed: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17  
(Circle one) [ ] college
11. Intelligence Level: (IQ below 70) Low [ ]  
(IQ 70 to 100) Medium [ ]  
(IQ above 100) High [ ]
12. Psychiatric Evaluation Performed: Yes [X] No [ ]  
If performed is defendant:  
a. Able to distinguish right from wrong? [X] [ ]  
b. Able to adhere to the right? [X] [ ]  
c. Able to cooperate intelligently in his own defense? [X] [ ]
13. If examined, were character or behavior disorders found? Yes [X] No [ ]  
(If answer is yes, please elaborate) There was testimony that he had a non-psychotic dissociative condition, caused by the marital conflict.
14. What other pertinent psychiatric [and psychological] information was revealed  
The weight of the medical evidence, apparently believed by jury, was that he was responsible.
15. Prior work record of defendant:
- | Type Job   | Pay                     | Dates Held          | Reason for Termination |
|--|-------------------------|---------------------|------------------------|
| a. <u>LPN I</u>  | <u>\$758.50 monthly</u> | <u>1950 to 1977</u> | <u>This case</u>       |
| b. <u>Above service at Northwest Georgia Regional Hospital was continuous except for short</u> |                         |                     |                        |
| c. <u>breaks in service in 1957 and 1971.</u>  |                         |                     |                        |
| d. _____   |                         |                     |                        |
| e. _____   |                         |                     |                        |

\*A separate report must be submitted for each defendant sentenced to death.

## B. Data Concerning the Trial:

1. Was the case tried with or without jury? With [X] Without [ ]
2. How did the defendant plead? Guilty [ ] Not guilty [X]

## C. Offense Related Data

## 1. Capital Offense for Which Penalty Imposed:

- a. Treason . . . . . [ ]
- b. Murder . . . . . [X] Two Counts
- c. Kidnapping for Ransom . . . . . [ ]
- d. Kidnapping where Injury Results . . . . . [ ]
- e. Aircraft Hijacking . . . . . [ ]
- f. Rape . . . . . [ ]
- g. Armed Robbery . . . . . [ ]

## 2. Were other offenses tried in the same trial? yes [X] no [ ]

If other offenses were tried in the same trial list those offenses.

- a. Murder (second count)
- b. Aggravated Assault
- c. \_\_\_\_\_
- d. \_\_\_\_\_

3. If tried with jury, did the jury recommend the death sentence?  
Yes [X] No [ ]

## 4. Statutory aggravating circumstances found: Yes [X] No [ ]

## 5. Which of the following statutory aggravating circumstances were instructed and which were found?

- |   | Instructed | Found |
|---|------------|-------|
| a. (1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, or (2) The offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions.                                   | [ ]        | [ ]   |
| b. (1) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony or aggravated battery or (2) The offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree. | [ ]        | [ ]   |
| c. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.   | [ ]        | [ ]   |
| d. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.  | [ ]        | [ ]   |
| e. The murder of a judicial officer, former judicial officer, district attorney or solicitor or former district attorney or solicitor during or because of the exercise of his official duty.   | [ ]        | [ ]   |
| f. The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.  | [ ]        | [ ]   |



- |  | Instructed | Found |
|--|------------|-------|
| g. <del>The offense of murder, rape, robbery, or kidnapping</del> was outrageously or wantonly vile, horrible and inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim. Charged all of above except as marked out; jury found the part bracketed in red. | [X]        | [X]   |
| h. The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.   | [ ]        | [ ]   |
| i. The offense of murder was committed by a person in, or who has escaped from the lawful custody of a peace officer or place of lawful confinement.   | [ ]        | [ ]   |
| j. The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.   | [ ]        | [ ]   |
6. List nonstatutory aggravating circumstances indicated by the evidence, if any.
- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
7. Was there evidence of mitigating circumstances? Yes [X] No [ ]
8. If so, which of the following mitigating circumstances was in evidence?
- a. The defendant has no significant history of prior criminal activity. [X]
- b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. [ ]
- c. The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act. [ ]
- d. The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct. [ ]
- e. The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor. [ ]
- f. The defendant acted under duress or under the domination of another person. [ ]
- g. At the time of the murder, the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication. [ ]
- h. The youth of the defendant at the time of the crime. [ ]
- i. Other. Please explain if (i) is checked \_\_\_\_\_
9. If tried with a jury, was the jury instructed to consider mitigating circumstances? Yes [X] No [ ]
10. Does the defendant's physical or mental condition call for special consideration? Yes [ ] No [X]

11. Although the evidence suffices to sustain the verdict, does it foreclose all doubt respecting the defendant's guilt? Yes [X] No [ ]
12. Was the victim related by blood or marriage to defendant? Yes [X] No [ ]
13. If answer is yes, what was the relationship? One of the murder victims was the wife of the defendant and the other murder victim was the mother-in-law of the defendant.
14. Was the victim an employer or employee of defendant? No [X] as to both  
Employer [ ] victims  
Employee [ ]
15. Was the victim acquainted with the defendant? No [ ] YES-see #13  
Casual Acquaintance [ ] above  
Friend [ ]
16. Was the victim local resident or transient in the community? Resident [X] as to both  
Transient [ ] victims
17. Was the victim the same race as defendant? Yes [X] No [ ] as to both victims
18. Was the victim the same sex as the defendant? Yes [ ] No [X] as to both victims
19. Was the victim held hostage during the crime? No [X] as to both  
Yes - Less than an hour [ ] victims  
Yes - More than an hour [ ]
20. Was the victim's reputation in the community: Good [X] as to both  
Bad [ ] victims  
Unknown [ ]
21. Was the victim physically harmed or tortured? Yes [ ] No [X] as to both  
If yes, state extent of harm or torture: excluding the actual murdering of the two victims.
22. What was the age of the victim? One victim (defendant's wife) was 46. The other victim (defendant's mother-in-law) was 72.
23. If a weapon was used in commission of the crime was it?  
No weapon used [ ]  
Poison [ ]  
Motor Vehicle [ ]  
Blunt Instrument [ ]  
Sharp Instrument [ ]  
Firearm (Shotgun) [X]  
Other [ ]
24. Does the defendant have a record of prior convictions? Yes [ ] No [X]
25. If answer is yes, list the offenses, the dates of the offenses and the sentences imposed?
- | Offense  | Date of Offense | Sentence Imposed |
|--|-----------------|------------------|
| a. No prior convictions, but on September 7, 1977 (13 days before the murders) |                 |                  |
| b. defendant's wife (one of the victims) charged the defendant with aggravated |                 |                  |
| c. assault. No disposition ever made of this charge.                           |                 |                  |
| d. _____   |                 |                  |
26. Was there evidence the defendant was under the influence of narcotics or dangerous drugs at the time of the offense? Yes [ ] No [X]
27. Was the defendant a local resident or transient in the community?  
Resident [X]  
Transient [ ]

## D. Representation of Defendant \*

1. Date counsel secured Sept. 20, 1977; Later Hearing on appointments Dec. 22, 1977.
2. How was counsel secured? a. Retained by defendant ☒   
 b. Appointed by Court ☒ Conditional Appointment
3. If counsel was appointed by court was it because   
 a. Defendant unable to afford counsel? ☐   
 b. Defendant refused to secure counsel? ☐   
 c. Other (explain) See attached
4. How many years has counsel practiced law? a. 0 to 5 ☐   
 b. 5 to 10 ☒   
 c. over ten ☐
5. What is the nature of counsel's practice? a. Mostly civil ☐   
 b. General ☒   
 c. Mostly criminal ☐
6. Did the same counsel serve throughout the trial? Yes ☒ No ☐
7. If not, explain in detail Originally J. Calloway Holmes and Henry Stewart were  
representing defendant but later Mr. Stewart was excused because of bad health. He  
was replaced by Mrs. Gerry Holmes with consent of and at request of accused.  
(If more than one counsel served answer the above questions as to each  
counsel and attach to this report.)

## E. General Considerations

1. Was race raised by the defense as an issue in the trial? Yes ☐ No ☒
2. Did race otherwise appear as an issue in the trial? Yes ☐ No ☒
3. What percentage of the population of your county is the same race as the defendant?   
 a. Under 10% ☐   
 b. 10 to 25% ☐   
 c. 25 to 50% ☐   
 d. 50 to 75% ☐   
 e. 75 to 90% ☒ (1970 Census)   
 f. Over 90% ☐
4. Were members of defendant's race represented on the jury? Yes ☒ No ☐
5. If not, was there any evidence they were systematically excluded from the jury? Yes ☐ No ☒
6. Was the jury instructed to exclude race as an issue? Yes ☐ No ☒
7. Was there extensive publicity in the community concerning this case? Yes ☐ No ☒
8. Was the jury instructed to disregard such publicity. Yes ☐ No ☒
9. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence? Yes ☐ No ☐
10. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes ☐ No ☒
11. If answer is yes, what was that evidence? \_\_\_\_\_

12. In your opinion, was the death sentence imposed in this case appropriate? Yes ☒ No ☐

General comments concerning your answer: \_\_\_\_\_

## F. Chronology of Case

	Elapsed Days
1. Date of Offense <u>September 20, 1977</u>	<u>0</u>
2. Date of Arrest <u>September 20, 1977</u>	<u>0</u>
3. Date Trial Began <u>March 6, 1978</u>	<u>167</u>
4. Date Sentence Imposed <u>March 13, 1978</u>	<u>7</u>
5. Date post trial motions ruled on <u>Aug. 22, 1978</u>	<u>162</u>
6. Date Trial Judge's Report Completed <u>11-14-78</u>	
7. *Date received by Supreme Court _____	
8. *Date sentence review completed _____	
9. *Total elapsed days _____	
*To be completed by Supreme Court	

This report was submitted to the defendant's counsel for such comments as he desired to make concerning the factual accuracy of the report, and

1. His comments are attached ( )
2. He stated he had no comments ( )
3. He has not responded ( )

November 14, 1978  
Date

Don Wynn  
Judge, Superior Court of

Polk County

FILED IN OFFICE THIS 16 DAY  
OF November 19 78  
SANDRA W. GALLAGHER, CLERK  
BY: S. W. Calloway



3(c).

The Court, on information that the defendant was indigent, appointed J. Calloway Holmes and Henry A. Stewart, Sr. to represent the defendant. This was done while the Court was in session in another County. Later, at a hearing, Mr. Stewart was relieved because of health reasons and it was then determined that there was no finding of indigency by the Court; defendant had divested himself of substantial property by giving a house and lot to his children, after the occurrence in question.

The defendant stated that he was satisfied with the representation of Mr. Holmes, desired for Mrs. Holmes to assist in the defense, and agreed to apply the \$1,500 he had available in savings for his defense, and to also apply \$37.50 of his V.A. pension monthly check to attorneys fees.

The Court has assured counsel that at the end of the proceedings consideration will be given to the amount of money paid by the defendant and whether and how much the attorneys fees should be supplemented by funds from the County.

# IN THE SUPERIOR COURT FOR THE COUNTY OF POLK, STATE OF GEORGIA

THE STATE OF GEORGIA

vs.

ROBERT FRANKLIN GODFREY

## DEFENDANT'S COUNSELS' COMMENTS CONCERNING THE REPORT OF THE TRIAL JUDGE

Counsel would make the following comments revelant to the enumerated parts of the Trial Judge's Report:

A. *Number 12(b)*—Thjere was substantial testimony on behalf of the Defendant that he was unable to adhere to the right. See testimony of Dr. William S. Davis.

B. *(b)*—There was substantial psychiatric testimony by Dr. William S. Davis and by the Defendant that the murders were committed while the Defendant was under the influence of extreme mental or emotional disturbance.

D. *2(a)*—Counsel would take the position that he was never retained by the Defendant. He expressed to the Court that if he had a choice, he would not represent the Defendant; however, the Court held him to the appointment and required the Defendant to pay over \$1500.00 pension money that he had built up in his State job. Counsel will point out that this would never have constituted an appropriate retainer for him to take such a case as this voluntarily.

D. *3*—Counsel for the Defendant would refer the Honorable Court to his Brief concerning the manner of appointment of counsel, however, counsel would point out that on two occasions prior to trial and as recently as November 7, 1978, the Trial Court has refused to declare this Appellant indigent. The transcript of the hearings on November 7, 1978, concerning indigency on appeal of the Appellant and to amend the record on appeal are being filed with the Court for its consideration just prior to argument of these cases.

This the 15th day of November, 1978.

J. CALLOWAY HOLMES, JR.,  
Appointed Counsel for  
the APPELLANT, ROBERT FRANKLIN GODFREY

IN THE SUPREME COURT OF GEORGIA  
CASE No. 34256

THE STATE OF GEORGIA

*vs.*

ROBERT FRANKLIN GODFREY

*ENUMERATION OF ERRORS*

Comes now the Appellant, ROBERT FRANKLIN GODFREY, and files this Enumeration of Errors.

- (1) The verdict is contrary to the weight of the evidence.
- (2) The verdict is not supported by substantial evidence.
- (3) As a matter of law there was reasonable doubt as to the Appellant's guilt, or as to the Appellant's sanity at the time of the offense.
- (4) The Court erred in charging the jury and in refusing to charge the jury, as requested by the Appellant.
- (5) The Court erred in allowing into evidence highly inflammatory photographs which served no purpose and could only be considered cumulative evidence when the verbal testimony of the various witnesses is considered. The Appellant submits that this caused him to be improperly and unlawfully prejudiced.
- (6) The verdict and the entire proceedings upon trial in the above styled cases are null and void because the Grand Jury which indicted said Appellant was unconstitutionally composed, and on that basis, Appellant would move as part of this Motion for the verdict to be set aside and so declared null and void.
- (7) The Court erred in dismissing the Appellant's motion styled Plea and Abatement, Motion to Challenge the Array of Grand Jurors, Motion to Quash Indictments Returned and Motion to Dismiss. This caused Appellant to be deprived of a substantial Constitutional right which deprived this Appellant of due process of law, equal protection of the laws and deprived this Appellant of the privileges and immunities guaranteed to others under the Constitution of the United States.
- (8) The Court erred in failing and refusing Appellant's request to charge the Law of Manslaughter. This deprived



the Appellant of the due process of law, the equal protection of the laws, and deprived the Appellant of the privileges and immunities guaranteed to all citizens under the United States Constitution and the Constitution of the State of Georgia. Attached hereto as "Exhibit A" is a newspaper article referred to a case in the State of New York where in that state the Court charged the Law of Manslaughter when the provocation consisted entirely of a severe emotional stress as the record established existed in the case at bar.

(9) The Court erred in failing and refusing to grant a Mistrial, sua sponti, on its own motion during final argument when a relative of the deceased victims began to shriek and scream in the audience and then passed out causing a great distraction amongst the jurors and the others in the audience and which created an atmosphere in which it was unlikely that the jurors went to the jury room in a cool, dispassionate frame of mind such as jurors are required under the law to exercise. The Appellant submits that this deprived him of a fair and impartial jury and thus a fair trial and due process of law.

(10) The Court erred in failing to declare a Mistrial on its own motion and allowing the prosecutor to make highly inflammatory and prejudicial statements and gestures in final argument, one of which, that of pointing a shotgun into the crowd at the woman who shrieked and fainted referred to in the previous enumeration of error, and other statements calculated only to inflame the minds of the jurors so as to predispose them against a cool and dispassionate frame of mind all of which violated the right to a fair trial and the due process of law to which the Appellant was entitled.

(1) The court erred in failing to grant a Mistrial upon application of defense counsel upon a showing through one of the Court Baliffs that the jurors were discussing the case and commenting upon the evidence contrary to the Court's instructions to them, therefore depriving the Appellant, prior to the conclusion of the evidence, of the unbiased consideration of the jurors which deprived the Appellant of the due process of law, and a fair trial as guaranteed to him under the Constitutions of the United States and Georgia.

(12) The Court erred in pronouncing a sentence of death upon the Appellant when such verdict was imposed under the influence of passion and prejudice as indicated in the previous two enumerations of error.

(13) The Court erred in its instructions on the sentencing phase of the trial in that the instructions failed to make clear to the jury that they could recommend a life sentence even if they found evidence of a statutory aggravating circumstance, and failed to inform the jury that they were authorized to consider mitigating circumstances in contravention of the requirements laid down in Georgia Code Annotated Sections 27-2534.1 (B) and (C). This deprived the Appellant of the due process of law, the equal protection of the laws, a fair trial and the privileges and immunities guaranteed to all citizens under the Constitutions of the United States and of Georgia.

(14) The Court erred in overruling the Appellant's Motion in Limine to Exclude Specified Evidence, i.e., photographs and also erred in allowing into evidence over the Appellant's numerous objections the photographs which were merely cumulative evidence since explicit and detailed verbal testimony from the medical examiner and the police officers had previously been allowed before the jury and since color photographs were chosen when the State also had black and white photographs of the same views; it indicates that the State's intentions were merely to inflame the minds of the jurors against the Appellant and this prejudiced the Appellant improperly and deprived him of a fair trial and due process of law.

(15) The Court erred in overruling the Appellant's Motion for a Continuance which denied the Appellant the substantial right to a fair and impartial trial, due process of law and of well-prepared counsel guaranteed under the Sixth Amendment to the Constitution of the United States.

(16) The Court erred in denying the Appellant's Motion to Sever which substantially prejudiced the Appellant and denied him due process of law.

(17) The Court erred in overruling the Appellant's Motion for a Change of Venue which substantially prejudiced the rights of the Appellant under the Constitutions of the United States and of Georgia and particularly deprived the Appellant of a fair and impartial jury and of due process of law.

(18) The Court erred in overruling the Appellant's Motion to Compel Depositions or in the alternative to order a preliminary hearing for the Appellant and said denial deprived the Appellant of due process of the law and the equal protection of the laws guaranteed under the Constitutions of the United States and Georgia.

(19) The Court erred in overruling the Appellant's Motion to Dismiss the Indictment which challenged the constitutionality of the death penalty and the procedure for its imposition under the appropriate Code Sections in Georgia. And more particularly the Appellant alleges that Georgia Code Annotated Section 27-2534.1(B)(7), the aggravating circumstances found by the jury, that is the offense was outrageously and wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victims is unconstitutionally vague and subject to various and unpredictable interpretations depending on the nature and beliefs of particular jurors and therefore violates as well the equal protection clause of the Constitution of the United States.

(20) The evidence did not support the finding of the statutory aggravating circumstance.

(21) The Court erred in overruling the Appellant's Motion to Quash the Indictment filed on March 3rd, 1978 prior to entry of plea of not guilty which Motion alleged that the Indictment was defective in that it charged separate and distinct offenses within a single count contrary to Georgia law.

(22) The Court erred in failing to charge the Appellant's Request to Charge Number 7 in that it is an accurate statement of the law in Georgia and was not adequately covered in the Court's given charge.

(23) The Court erred in failing to charge the Appellant's Request to Charge Number 8 which was warranted in this case, since a valid law and was not covered adequately in the Court's charge.

(24) The Court erred in failing to charge the Appellant's Request to Charge Number 10 in that said charge sets out valid Georgia case law which has been neither reversed nor overruled and which was not adequately covered in the Court's given charge, and which refusal improperly prejudiced the Appellant.

(25) The Court erred in failing and refusing to give the Appellant's Request to Charge Number 11 which charge sets out valid Georgia case law and which was not adequately covered in the Court's given charge which improperly prejudiced this Appellant.

(26) The Court erred in refusing and failing to charge the Appellant's Request to Charge Number 14 which is a valid statement of law and which was not adequately covered in the Court's given charge.

(27) The Court erred in failing and refusing to give the Appellant's Request to Charge Number 16 concerning the definition of reasonable doubt since the definition given by the Court in its charge tends to favor the State and diminishes the idea of a reasonable doubt, therefore, Appellant submits that his charge should have been given as a counterweight to the Court's given charge, and submits that he was improperly prejudiced thereby.

(28) The Court erred in failing and refusing to charge the Appellant's Request to Charge Number 19 in that it set out a valid statement of the law of Georgia and was not adequately covered in the Court's given charge and therefore improperly prejudiced the Appellant.

(29) The Court erred in failing and refusing to charge the Appellant's Request to Charge Number 21 which should have been charged because manslaughter should have been charged under the facts of this case and the Appellant was greatly prejudiced by the removal of this option from the jury and further, this charge is a valid statement of the law in Georgia.

(30) The Court erred in failing and refusing to charge the Appellant's Request to Charge Number 23 in that it constitutes a valid statement of the law and was not adequately covered in the Court's given charge which was improperly prejudicial to the Appellant.

(31) The Court erred in failing and refusing to give the Appellant's Request to Charge Number 28 which requested that the Court charge the jury Georgia Code Annotated Section 27-1503 (A) and (B). This charge would have explained to the jury that the Appellant, even though acquitted as insane, could be confined almost indefinitely by petition to the Court by the District Attorney or other governmental authority, and deprived defense counsel of the opportunity to argue such to the jury, thereby, leaving the jury with the impression that it had to either convict the Appellant or see the Appellant walk out of the courtroom onto the streets, all of which improperly prejudiced the Appellant and tended to dispose the jurors toward resolving any doubt in their mind against the Appellant, contrary to law.

(32) The Court erred in allowing the District Attorney to read, at the beginning of his argument, before the jury portions of a case which though clearly distinguishable upon the facts, did, or could easily have, cause the jury to believe that the Supreme Court of Georgia had directed



that cases similar to the case at bar were deserving of guilty verdicts; and the Appellant further alleges that the whole procedure whereby the District Attorney is allowed to read from case law to the Court in the presence of the jury is a violation of due process in that it infringes upon the Court's function to give the law to the jury and is confusing to the jury all to the improper prejudice of the Appellant, which denies the Appellant his right to a fair trial before an impartial jury.

(33) The Court erred in allowing the District Attorney to make remarks in his argument to the jury at the sentencing stage which included quotations concerning the death penalty from an old Georgia case in violation of the Georgia Code Annotated Section 24-3349 and which Appellant submits caused the sentence of death to be imposed under the influence of passion and prejudice.

STEWART AND HOLMES

By S/ \_\_\_\_\_  
J. CALLOWAY HOLMES, JR.

P.O. Box 63  
Cedartown, Georgia 30125

By S/ \_\_\_\_\_  
GERRY E. HOLMES

P.O. Box 930  
Cedartown, Georgia 30125

#### STATEMENT OF JURISDICTION

The Supreme Court of Georgia, rather than the Court of Appeals, has jurisdiction of this case on appeal for the reason that the Defendant, Robert Franklin Godfrey, was convicted for a capital felony and the death sentence imposed. Georgia Code Annotated §2-3704.

#### IN THE SUPREME COURT OF GEORGIA

NO. 34256

ROBERT FRANKLIN GODFREY, APPELLANT

v

THE STATE, APPELLEE

OPINION—February 27, 1979

HALL, Justice.

Appellant, Robert Franklin Godfrey, was tried in Polk County for the murder of his wife and mother-in-law and for aggravated assault on his eleven-year-old daughter. Following his conviction by a jury, he was sentenced to death for each of the murders and to 10 years imprisonment for the aggravated assault. He appeals to this court on enumerated errors and for mandatory review of the death sentences imposed.

#### *I. Summary of the Evidence*

There was evidence presented in court from which the jury was authorized to find the following:

On September 5, 1977, appellant's wife left him after he cut some of her clothes off her body with a knife. She moved in with her mother, refused to move back home, and filed for divorce. She also charged him with aggravated assault.

On the morning of September 20, 1977, Appellant, who was employed as a male nurse, told a female nurse that he was getting a divorce and it would all be over on the twenty-first. (The divorce hearing was set for the twenty-second.) On the same day, Appellant's mother-in-law called him at work and told him that Mrs. Godfrey would telephone him that evening. She did call, but would not agree to halt the divorce proceedings for an attempted reconciliation. Mrs. Godfrey called back later and again refused to attempt reconciliation.

Appellant took his single action rifle-shotgun and walked to the mother-in-law's trailer home, in which Mrs. Godfrey, her daughter and her mother were playing a game around a table. Appellant killed his wife by shooting her in the head, firing through a window. He struck his



eleven-year-old daughter on the head with the barrel of the gun as she ran for help. Appellant then shot his mother-in-law, killing her. He then called the Polk County Sheriff's office, identified himself, reported the crimes and gave directions to the trailer. He waited at the scene until a policeman arrived. Appellant told the policeman "they're dead. I killed them," and directed the policeman to the murder weapon which was resting in the branches of an apple tree.

After being arrested and advised of his rights, appellant was taken to the police station where he told a police officer that he had committed a "hideous crime" which he had thought about for eight years and would do again.

The theory of the defense at trial was insanity. The defense psychiatrist described Appellant's behavior during the murders as a "dissociative attack," but did not testify that this was a psychosis of any kind. Appellant denied remembering anything from the time of his second telephone conversation with Mrs. Godfrey until he "woke up" in jail the following day. The defense psychiatrist testified that Appellant could not remember the crimes even after receiving an injection of sodium amytal, a "truth serum," although the drug did not affect him as much as most people, perhaps because of his history of heavy drinking.

The state presented testimony from experts and other witnesses that Appellant was sane and could distinguish right from wrong.

## II. Enumerations of Error

1. Enumerations of error 1,2 and 3 incorporate what are generally referred to as the general grounds.

On appeal this court does not review the weight of the evidence but examines its sufficiency. *Peek v. State*, 239 Ga. 422 (238 SE2d 12) (1977). If there is any evidence to support it the verdict will not be disturbed on appeal. *Drake v. State*, 241 Ga. 583, 585 (247 SE2d 57) (1978); *Campbell v. State*, 240 Ga. 352, 354 (240 SE2d 828) (1977). There was abundant evidence admitted at trial to support these verdicts.

Appellant's contention that the evidence as to his sanity raised a reasonable doubt as to his guilt is without merit; there was absolutely no evidence, even from the defense psychiatrist, that Appellant had been at any time psychotic or "insane." See *Spivey v. State*, 241 Ga. 477, 478

(246 SE2d 288) (1978). These enumerations are without merit.

2. Enumerations 5 and 14 urge that the trial court erred in admitting over objection certain photographs taken at the scene of the crime depicting the victims' wounds and the surrounding area. Portions of the heads of both victims were literally blown away, and when officers arrived blood was dripping from the ceiling of the trailer.

We have repeatedly held that photographs of this sort are generally admissible. E.g., *Steven v. State*, 242 Ga. 34, 38 (247 SE2d 838) (1978); *Burger v. State*, 242 Ga. 28, 31 (247 SE2d 834) (1978); *White v. State*, 242 Ga. 21, 22 (247 SE2d 759) (1978); *Lamb v. State*, 241 Ga. 10, 13 (243 SE2d 59) (1978); *Moore v. State*, 240 Ga. 807, 816 (243 SE2d 1) (1978); *Davis v. State*, 240 Ga. 763, 766-767 (243 SE2d 12) (1978).

Appellant cites in support of his objection the following sentence from *Holcomb v. State*, 130 Ga. App. 154, 155 (202 SE2d 529) (1973): "Where, as here, the cause of death is not in dispute, and the defendant admits to having fired the fatal bullet, a trial judge would often be well advised to sustain an objection to their [photographs'] admissibility on the ground that they add nothing of probative value to the record." This sentence is dicta; it does not correctly state the law of Georgia; it has proved confusing to trial counsel; and we have disapproved it. *Stevens*, supra, at 39. We agree with the state that a criminal defendant has no right to prevent the jury from seeing the crime scene and the victims' injuries. The trial court did not err in admitting these photographs.

3. In enumerations 6 and 7, Appellant urges that the grand jury which indicted him was unconstitutionally composed and that it was error to dismiss his motion challenging its composition.

These murders occurred on September 20, 1977; counsel was notified of his appointment to represent Appellant on September 21, 1977; and he has never been relieved of those duties notwithstanding some question he raised concerning Appellant's ability to pay him. Appellant was indicted by the grand jury on December 15, 1978. Thus, Appellant was represented by counsel long before indictment, but no objection to the composition of the grand jury was raised prior to indictment.

The general rule in Georgia is that for a challenge to the array of grand jurors "to be entertained by the trial court,

it must be made prior to the return of the indictment or the defendant must show that he had no knowledge, either actual or constructive, of such alleged illegal composition of the grand jury prior to the time the indictment was returned; otherwise, the objection is deemed to be waived. *Estes v. State*, 232 Ga. 703, 708 (208 SE2d 806) (1974).” *Sanders v. State*, 235 Ga. 425, 426 (219 SE2d 768) (1975) cert den., 425 U.S. 976 (96 SC 2177, 48 LE2d 800) (1976).

There was no showing that Appellant did not have reason to believe that an indictment would be returned against him, having had counsel appointed three months before indictment and having admittedly killed two persons. *Holsey v. State*, 235 Ga. 270 (219 SE2d 374) (1975); *Wooten v. State*, 224 Ga. 106 (160 SE2d 403) (1968). There is no contention that the alleged illegality of the grand jury composition was unknown prior to indictment.

To avoid being held to have waived the objection, Appellant argues that the indictment was rendered by a specially summoned grand jury, and he did not expect it until several weeks later. This is not a ground of exemption from the waiver rule. A defendant has no right to be notified in advance of grand jury proceedings, and has no right to be there. Indeed, *Howard v. State*, 60 Ga. App. 229, 235-236 (4 SE2d 418) (1939) clearly shows that the state law contemplates that indictments shall be returned in secret, without the accused’s knowing exactly when.

Appellant was correctly held to have waived his right to object to the composition of the grand jury, and enumerations 6 and 7 are without merit.

Even were we to consider the merits of this point, it would fail. The primary thrust of Appellant’s attempted evidence at the motion hearing was that persons between 18 and 21 years of age were not present on the grand jury although Georgia law now authorizes them to serve. This does not show illegality of the grand jury: age is not a recognized class for purposes of grand jury representation. *Fouts v. State*, 240 Ga. 39, 41 (239 SE2d 366) (1977); *Barrow v. State*, 239 Ga. 162 (236 SE2d 257) (1977); *State v. Gould*, 232 Ga. 844 (209 SE2d 312) (1974).

4. In enumerations 8 and 29, Appellant alleges the trial court erred in refusing to charge the law of manslaughter.

There was no evidence in this case of “sudden, violent and irresistible passion resulting from serious provocation to warrant charging on voluntary manslaughter under Code Ann. §26-1102.

5. In enumerations 9 and 10, Appellant alleges the trial court erred twice in failing to grant a mistrial, sua sponte. Enumeration 9 complains of the prosecutor’s final argument during which a relative of the deceased victims fainted in the courtroom. Enumeration 10 objects to that part of the prosecutor’s argument which ridiculed the testimony of the defense psychiatrist. No mistrial motion was made on either ground.

Our review of the supplemental record, containing a transcript of a hearing on these points, shows that the trial court did not err as charged, as no ground for mistrial appears.

Accordingly, enumerations 9 and 10 are without merit.

6. In enumeration 11, Appellant alleges that the trial court erred in failing to grant a mistrial upon application of defense counsel showing through one of the bailiffs that the jurors were discussing the case and commenting upon the evidence prior to the start of their deliberations. A bailiff testified that “Well, I heard someone say something about the defendant showing no emotion when he saw those pictures [of the victims].” There was no further evidence.

From the question asked, the bailiff was undoubtedly referring to a juror’s comment on the demeanor of the defendant. There is no indication of pre-judgment of evidence in violation of the instructions of the trial court. Nor does it appear that there was an unauthorized communication to a bailiff. Under these circumstances the trial court did not err in denying the Appellant’s motion for a mistrial. See, *Battle v. State*, 234 Ga. 637 (217 SE2d 255) (1975).

7. In enumeration 15, Appellant complains of the overruling of his motion for a continuance. A continuance was sought to allow further time to prepare for trial and to allow community sentiment aroused by the crime to cool.

The granting of a continuance rests in the sound discretion of the trial judge. Code Ann. §§27-2202, 81-1419. Counsel were notified of their appointment on September 21, 1977 and the motion for continuance was filed February 1, 1978, and heard February 9, 1978. Under these circumstances, and in light of our disposition of enumeration 17 below, we cannot say the trial court abused its discretion *Campbell v. State*, 240 Ga. 352, 356 (240 SE2d 828) (1977); *Pulliam v. State*, 236 Ga. 460, 461-462 (224 SE2d 8) (1976).



8. In enumerations 16 and 21, Appellant alleges the trial court erred in denying his motion to sever the two murder charges. He urges that the joint trial of two "gruesome killings is inherently prejudicial." This contention is totally without merit. Code Ann. §26-506(b) and (c); *Stewart v. State*, 239 Ga. 588, 589 (238 SE2d 540) (1977); *Jarrell v. State*, 234 Ga. 410, 413 (216 SE2d 258) (1975); *Henderson v. State*, 227 Ga. 68 (179 SE2d 76) (1970). Neither were counts 1 and 2 objectionable because each was sufficient to charge both felony murder and malice murder.

Enumerations 16 and 21 are without merit.

9. In enumeration 17, Appellant urges that the court erred in overruling his motion for a change of venue, which was made on the theory that pre-trial publicity made it impossible for him to obtain an unbiased jury. "The test as to whether pre-trial publicity has so prejudiced a case that an accused cannot receive a fair trial is whether the jurors summoned to try the case have formed fixed opinions as to the guilt or innocence of the accused from the pre-trial publicity. *Krist v. Caldwell*, 230 Ga. 536, 537 (198 SE2d 161) (1973)." *Wilkes v. State*, 238 Ga. 57, 58-59 (230 SE2d 867) (1976). Accord, *Burnett v. Smith*, 240 Ga. 681, 684 (242 SE2d 79) (1978). See Code Ann. §§27-1101, 27-1201.

After studying the voir dire examination in this case we conclude that it does not show that the jurors selected to try Appellant's case had formed fixed opinions as to guilt or innocence from publicity in the community.

Enumeration 17 is therefore without merit.

10. Appellant alleges in enumeration 18 that the trial court erred in overruling his motion to compel depositions of witnesses, or in the alternative to order a preliminary hearing.

Appellant correctly concedes that there is no statutory provision for depositions or discovery in criminal cases in this state. *Brown v. State*, 238 Ga. 98 (231 SE2d 65) (1976). After indictment and subsequent conviction the lack of a commitment hearing will not be construed as reversible error. *State v. Middlebrooks*, 236 Ga. 52 (222 SE2d 343) (1976) and cases cited therein. Moreover, the defense attorney was repeatedly given access to the entire state file, and nothing prevented him from interviewing witnesses. This enumeration is without merit.

11. In enumeration 19, Appellant makes a general attack on the constitutionality of the Georgia death penalty

statute and specifically attacks the statutory aggravating circumstance described in Code Ann. §27-2534.1 (b) (7) ("The offense of murder . . . was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim") as unconstitutionally vague.

The Georgia death penalty statute (Ga. L. 1973, p. 159 et seq. (Code Ann. §27-2534.1)) has been upheld by this court and by the Supreme Court of the United States. *Gregg v. State*, 233 Ga. 117 (210 SE2d 659) (1974); *Gregg v. Georgia*, 428 U.S. 153 (96 SC 2909) (1976). We have previously considered the vagueness issue raised by Appellant, and have upheld Code Ann. §27-2534.1 (b) (7) in *Harris v. State*, 237 Ga. 718, 731-733 (230 SE2d 1) (1976) and *Lamb v. State*, 241 Ga. 10, 14-15 (243 SE2d 59) (1978). The statute is not unconstitutional for any reason alleged.

12. In enumerations 4, 22, 23, 24, 25, 26, 27, 28, 30, and 31, Appellant challenges instructions given by the trial court, or contends that the court erred in refusing to give requested instructions.

We have examined each enumeration and find that the court covered the matter correctly in his instructions, or that the requested charge does not correctly reflect the law, or that the giving of the requested charge would have been inappropriate.

13. In enumeration 32 Appellant states that the trial court erred in allowing the district attorney in his argument to read before the jury from decided cases.

Code Ann. §24-3319 provides in part that "Counsel shall not be permitted, in the argument of criminal cases, to read to the jury recitals of fact or the reasoning of the court as applied thereto, in decisions by the Supreme Court or Court of Appeals."

The argument challenged was directed to the trial judge on matters of law. Although the jury was present, reading and arguing law to the court is not reversible error. *Potts v. State*, 241 Ga. 67, 75 (243 SE2d 510) (1978).

Appellant's other enumerations concern matters that will be considered in our sentence review.

### III. Sentence Review

In our sentence review we have considered the evidence concerning the crimes of murder and the aggravating circumstances found by the jury and the matters presented by Appellant.

We have reviewed the death sentence as required by Ga. L. 1973, p. 159 et seq. (Code Ann. §27-2537 (c)), as was done in *Coley v. State*, 231 Ga. 829 (204 SE2d 612) (1974), and each subsequent case involving the death penalty under this statute.

With regard to the sentence our first consideration is:

"Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor" Code Ann. §27-2537(c) (1).

Appellant alleges in enumeration 12 that the forceful argument of counsel which he alleges caused a spectator to faint (enumeration 10) and the comment by a juror concerning the demeanor of Appellant (enumeration 11) resulted in the sentence of death being imposed under the influence of passion and prejudice. We do not so find.

He also alleges in enumeration 33 that the District Attorney's argument to the jury at the sentencing stage which included quotations concerning the death penalty from an old Georgia case, caused the sentence of death to be imposed under the influence of passion and prejudice.

Our study of that portion of the District Attorney's argument shows that the judge referred to, the case, and the outcome, were all unidentified. The quotation was of minimal significance, and enumeration 33 contains no merit. *Ruffin v. State*, 243 Ga. 95 (1979) and *cits*.

We conclude that the sentences of death imposed here were not imposed under the influence of passion, prejudice, or any other arbitrary factor.

Our second consideration is:

"Whether, in cases other than treason or aircraft hijacking, the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in Section 27-2534.1 (b)." Code Ann. §27-2537(c) (2).

The statutory aggravating circumstance found by the jury as to each murder was "the offense of murder was outrageously or wantonly vile, horrible and inhuman." Code Ann. §27-2534.1(b) (7).

The evidence supports the jury's finding of statutory aggravating circumstances, and the jury's phraseology was not objectionable. See *Ruffin v. State*, *supra*.

Although Appellant alleges "The Court erred in its instructions on the sentencing phase of the trial in that the instructions failed to make clear to the jury that they could recommend a life sentence even if they found evi-

dence of a statutory aggravating circumstance, and failed to inform the jury that they were authorized to consider mitigating circumstances" we find that the court defined mitigating circumstances and charged "In determining your verdict in this case you shall consider any mitigating circumstances which you find," as well as charging "even though you find the existence of a statutory aggravating circumstance or circumstances you could recommend a life sentence."

The charge of the trial court complies with the requirements laid down in *Fleming v. State*, 240 Ga. 142 (240 SE2d 37) (1977); *Hawes v. State*, 240 Ga. 327, 334 (240 SE2d 833) (1977) and *Spivey v. State*, 241 Ga. 477, 479 (246 SE2d 288) (1978).

The verdict is factually substantiated.

Our final consideration is: "Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." Code Ann. §27-2537 (c) (3).

In reviewing the death penalty in this case, we have considered the cases appealed to this court since January 1, 1970, in which a death or life sentence was imposed and we find the similar cases listed in the Appendix support the affirmance of the death penalty in this case. Robert Franklin Godfrey's sentence to death is not excessive or disproportionate to the penalty imposed in similar cases considering both the crime and the defendant.

*Judgment affirmed. All the Justices concur, except Jordan, J., who dissents as to Division 2, and Hill, J., who dissents.*

ARGUED NOVEMBER 20, 1978—

DECIDED FEBRUARY 27, 1979—

REHEARING DENIED MARCH 27, 1979.

Murder, etc. Polk Superior Court. Before Judg Winn.

J. Calloway Holmes, Jr., Gerry E. Holmes, for appellant.

John T. Perrin, District Attorney, Arthur K. Bolton, Attorney General, John W. Dunsmore, Jr., Assistant Attorney General, for appellee.



## APPENDIX.

House v. State, 232 Ga. 140 (205 SE2d 217) (1974); Gregg v. State, 233 Ga. 117 (210 SE2d 659) (1974); Floyd v. State, 233 Ga. 280 (210 SE2d 810) (1974); Chenault v. State, 234 Ga. 216 (215 SE2d 223) (1975); Smith v. State, 236 Ga. 12 (222 SE2d 308) (1976); Birt v. State, 236 Ga. 815 (225 SE2d 248) (1976); Coleman v. State, 237 Ga. 84 (226 SE2d 911) (1976); Isaacs v. State, 237 Ga. 105 (226 SE2d 922) (1976); Dungee v. State, 237 Ga. 218 (227 SE2d 746) (1976); Banks v. State, 237 Ga. 325 (227 SE2d 380) (1976); Young v. State, 239 Ga. 53 (236 SE2d 1) (1977); Gaddis v. State, 239 Ga. 238 (236 SE2d 594) (1977); Peek v. State, 239 Ga. 422 (238 SE2d 12) (1977); Westbrook v. State, 242 Ga. 151 (249 SE2d 524) (1978); Finney v. State, 242 Ga. 582 ( SE2d ) (1978).

## Supreme Court of the United States

No. 78-6899

ROBERT FRANKLIN GODFREY, PETITIONER

v.

GEORGIA

ON PETITION FOR WRIT OF CERTIORARI TO the Supreme Court of the State of Georgia.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, limited to the question presented by the Court: In affirming the imposition of the death sentence in this case, has the Georgia Supreme Court adopted such a broad and vague construction of Georgia Code Ann. §27-2534.1(b)(7) (specifying certain aggravating circumstances) as to violate the Eighth and Fourteenth Amendments to the United States Constitution?

OCTOBER 9, 1979